SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 630

THE UNITED STATES, PETITIONER

vs.

THOMAS LEE CAUSBY AND WIFE, TINIE CAUSBY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Court of Claims of the United States

Petition—Filed January 13, 1944

Thomas Lee Causby and wife, Tinie Causby, of Route No. 1, Guilford College, North Carolina, hereby file a claim for damages in the total amount of Seven Thousand, Thirty-five Dollars ($7,035.00), and would respectfully show to the Court:

1. That they are the owners of the following described property:

Being Lot No. 32 in what is known as the Lindley Subdivision, a plat of which is recorded in the Office of the Register of Deeds of Guilford County, in Plat Book 9, at Page 74. (2.8) acres.

That the above land is located in Friendship Township, Guilford County, North Carolina.

That no other person has any interest in the said property, except C. O. Meredith, Greensboro, North Carolina, who holds a mortgage lien against the property in the amount of Nine Hundred Dollars ($900.00).

2. That the said property is located about six miles west of Greensboro, North Carolina on Highway No. 421 and just east of the Greensboro-High Point Airfield, which Airfield was taken over by the War Department something like two years ago.

3. That, prior to the time the Airfield was taken over by the War Department, and up until recently, the claimants had been engaged in the poultry business on their property; that, on their property are located the following

2 buildings: A five-room residence with bath and sleeping porch, of frame construction, built in 1936, painted, and in good condition; one frame garage; one 20′ x 20′ two-story chicken house, frame construction, with metal roof; one 32′ x 20′ combination chicken house; one 20′ x 20′ shed roof chicken house; one 12′ x 14′ brooder house; one 10′ x 10′ feed house; two 10′ x 12′ rain shelters; two hog houses, one 14′ x 8′ and the other 10′ x 10′; wire fence enclosing a one-half acre hog lot; that, after the War Department took over the Airfield, certain necessary im-

provements and enlargements were made; that the runways were extended, and that various properties were either purchased, acquired, or condemned for that purpose; that one of the principal runways extending east ends only about 1500 feet from the property of the claimants; that the property of the claimants and the buildings are directly in line with the eastern runway; that, apparently the Engineering Division of the War Department contemplated condemning the property of the claimants; that officials of the Department talked to the claimants about obtaining an aviation easement over the property of the claimants and explained that it would be necessary to cut trees in the claimants' yard in order to clear the angle of glide; that no condemnation proceeding has been brought on behalf of the United States Government; that, apparently, no such action is contemplated at this time.

4. That planes of all descriptions pass immediately over the claimants' property and home almost incessantly day and night; that some of the planes, particularly bombers, go so close to the house that they actually clip leaves from the trees; that only recently three planes have fallen near claimants' house; that the situation has become so bad, the hazard so great, and the noise and thoughts of the danger so nerveracking to the claimants and their family

3 that claimants have had to sell their chickens, at a sacrifice, and are planning to move away just as soon as they can find some other location; that the conditions on their premises are unbearable, and their home uninhabitable.

5. That, as hereinbefore stated, the claimants have been engaged in the poultry business; that they produced eggs especially for hatching purposes and also raised young chickens and sold them for fryers; that, prior to the time they had to give up their business, and especially prior to the time the War Department took over the Airport and enlarged the same, the claimants had a profitable business; that, after the War Department took over the Airfield, and after it was used for all types of planes, their production from their poultry business dropped off con-

siderably, as they allege, due to the effect of the noise from the planes; that they lost at least one hundred hens from injury sustained by their flying against the wall when frightened by planes; and the claimants allege that they have sustained special damages to their business in the amount of One Thousand Dollars ($1,000) on account of the use made of the property by the War Department.

6. That, while the War Department has not actually condemned the property of the claimants, the claimants allege that the use made of their property is tantamount to a taking of same in that it has become uninhabitable; and the claimants allege that their damages amount to the fair market value of the land and improvements prior to the operations of the War Department, together with whatever special damages the claimants have sustained; that the land and buildings enumerated above were reasonably worth the sum of Six Thousand, Thirty-five

4 Dollars ($6,035.00); that the claimants verily believe that they have suffered special damages in the sum of One Thousand Dollars ($1,000.00);

Wherefore, the claimants pray that their claim in the amount of Seven Thousand, Thirty-five Dollars ($7,035.00), as damages, be allowed; and, for such other and further relief as they may be entitled to in the premises.

WM. E. COMER,
Attorney for Claimants.

[Duly sworn to by Thomas Lee Causby; jurat omitted in printing.]

5 *General Traverse—Filed February 25, 1944*

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANCIS M. SHEA,
Assistant Attorney General.

Argument and submission of case

On February 5, 1945 the case was argued and submitted on merits by Mr. William E. Comer for plaintiffs, and by Miss Mary K. Fagan for defendant.

7 *Special findings of fact, conclusion of law and opinion of the court by Whitaker, J. Dissenting opinion by Madden, J.—Filed June 4, 1945*

Mr. William E. Comer for the plaintiff.

Miss Mary K. Fagan, with whom was *Mr. Assistant Attorney General Francis M. Shea*, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. Plaintiffs, Thomas Lee Causby and Tinie Causby, his wife, are residents of the State of North Carolina, and own Lot No. 32 in the "Lindley Subdivision," Friendship Township, Guilford County, North Carolina, containing 2.8 acres, subject to a mortgage lien in the amount of nine hundred dollars in favor of C. O. Meredith of Greensboro, North Carolina. On this land are the following improvements:

A six-room painted, frame dwelling house with a bath and hot and cold water, one 20 x 20 two-story chicken house with automatic water system, built on concrete with metal roof and painted, one 20 x 32 combination chicken house, one brooder house, ceiled, with shingle roof, one 20 x 20 one-story chicken house, with water and connections in all the above, one feed house, 10 x 10, one garage, two rain shelters, two summer sheds, some hog houses and hog lots, and a wire fence, one well and pressure water system.

Plaintiffs purchased this property in 1934, the improvements were completed in 1937 and plaintiffs and their family have lived there continuously since 1937 up to the present time, except approximately two months early in

1944. The property consists of a strip of land measuring on the south on Federal Highway No. 421, approximately 100 feet, and extends north of equal width approximately 1,200 feet to property of one Boren. The property is located about eight miles west of the City of Greensboro, North Carolina. Plaintiffs' chief business was operation of a chicken farm of considerable volume on the property and raising chickens for breeding purposes. The improvements are in fairly good state of repair.

2. The Greensboro-High Point Municipal Airport Authority operates an airport covering a considerable acreage of land, under and by virtue of an enabling Act of the North Carolina Legislature, passed in 1941. The airport was activated in April 1942. It is located about eight or nine miles west of the City of Greensboro, North Carolina, on Federal Highway No. 421. The present Authority is the successor in title to the property from some former Authority as to which the proof is unsatisfactory.

3. In 1927 or 1928 there was a landing field on the site of the present airport with a wooden hangar and small administration building. A weather bureau was established during that early period. The field was used by civilians who flew the planes in use at that time. It is not shown at what definite time later the field developed into an authorized airport, but from 1927 or 1928 the site has been in continuous operation for airplanes, and for a long time prior to the execution of the lease to the defendant, mentioned in finding 5, it was an authorized airport, use of which was made by mail planes, commercial airliners, and civilian planes.

During the year 1939 extensions were made to one or both runways, but no hard-surface extensions have been made since that date. There was no control tower for directing the operation of planes prior to July 1943. Traffic was not heavy until the present war.

4. Located on and forming a part of the airport and the airport property are two runways. One runway, designated as the northeast-southwest runway, is 150 feet

in width and 4,000 feet in length. The other runway designated as the northwest-southeast runway is 150 feet in width and 3,370 feet in length. These runways are both asphaltic concrete pavement runways.

5. On May 11, 1942, a lease was entered into by and between the Greensboro-High Point Airport Authority and the United States of America, which contained the following provisions:

"2. The Lessor hereby leases to the Government the following-described premises, viz: the Greensboro-High Point Airport, plat of which is hereto attached, marked 'Exhibit A,' and made a part of this lease. It is understood and agreed that the full, exclusive and unrestricted use of same by the Government shall be exercised concurrently, jointly, and in common with the Lessor and its tenants. It is further agreed and understood that the Lessor leases to the Government the present steel hangar located on said airport property, and ten acres of land, more or less, adjoining the said hangar, for the exclusive use of the Government. The said hangar and ten-acre tract of land, more or less, is designated by red lines on the plat marked 'Exhibit A.' However, it is understood and agreed that the Lessor retains the right of ingress, egress, and regress for the purpose of servicing and inspecting the water pump which is located on said tract of land, to be used exclusively for the following purposes (see instruction No. 3): Requirements of the War Department."

The term for which the lease was given commenced June 1, 1942, and ended June 30, 1942, with provision for renewal until June 30, 1967, or six months after the end of the present national emergency whichever shall first occur. The lease has been renewed and is in operation.

The United States erected a hangar barracks and other operational buildings on the ten acres adjoining the airport property which it leased from the Authority, and it controls the military operations of the defendant at that airport.

The United States also acquired by title in fee among

other parcels of land an aggregate of 38.04 acres at the southeast end of the northwest-southeast runway for the purpose of eliminating flying hazards. The 38.04 acres is cleared and seeded.

Lying between the tract of 38.04 acres at the end of the northwest-southeast runway and plaintiffs' property are three tracts aggregating 74.62 acres which have not been acquired by the United States.

6. On July 27, 1943, the Civil Aeronautics Authority, Department of Commerce, placed a manager at the airport for administration of traffic control and installed a control tower with employees also under Civil Aeronautics Authority, Department of Commerce. Since that date all air traffic is controlled from the tower. Instructions for landing and taking off are given to all planes taking off or landing except such planes as are without radio. These instructions relate to the available runway, wind direction and velocity, etc. Records are kept of all planes landing and taking off. Military aircraft are required to land on and take off from the paved, hard-surface runways and not from the seeded area. All operations of the airport, other than on the ten acres leased exclusively to the United States, are controlled by the Greensboro-High Point Airport Authority.

7. The wind direction and velocity are material governing factors in directing planes in regard to the particular runway to use in landing and taking off from the airport. For this airport what is known as a "windrose" or a calculation of the prevailing wind direction was prepared by the U. S. Weather Bureau from its records. This windrose indicates that because of the prevailing winds over the northwest-southeast runway near plaintiffs' property this runway would be used approximately 4% of the time in taking off and 7% of the time in landing.

8. Planes using the airport are classed as air liners, civilian itinerant, civilian local, and military. The military bombers are heavy, four-motored planes; ten percent of the military traffic is of the heavy four-motored bomber type. The transport planes are approximately

the same weight as commercial airline planes. The fighter planes are lighter.

The following tabulation indicates the use of the airport by aircraft and the figures represent the two plane movements of coming in and leaving. The actual number of planes, in each instance, is one-half of the figures given:

Date	Air liner	Civilian itinerant	Civilian local	Military	Monthly total
August 1943	242	289	2,584	1,576	4,691
September 1943	226	111	4,082	1,384	5,803
October 1943	256	115	3,647	1,598	5,656
November 1943	238	162	3,336	1,750	5,486
December 1943	232	147	3,892	1,542	5,813
January 1944	200	149	6,220	1,647	8,216
February 1944	184	112	854	1,552	2,702
Total 7 months' period	1,578	1,125	24,615	11,049	38,367

9. The distance from the end of the paved portion of the northwest-southeast runway to the barn on plain-
11 tiffs' property is 2,220 feet; to the highest tree thereon it is 2,230 feet; and to plaintiffs' dwelling house it is 2,275 feet. The elevation of the runway is between 5 and 6 feet above the elevation of plaintiffs' property. Plaintiffs' house is approximately 16 feet high, his barn is approximately 20 feet high, and the tallest tree is approximately 65 feet high.

The safe glide angle for planes landing or taking off at this airport, approved by the Civil Aeronautics Authority, is a 30 to 1 glide angle, which means one foot of elevation or descent for every 30 feet of horizontal distance.

The path of glide of aircraft taking off from or in landing upon the northwest-southeast runway is directly over plaintiffs' property. Computed on the basis of 30 to 1 glide angle the top of plaintiffs' barn is 63 feet below the glide angle; the top of the dwelling is 67 feet below it, and the top of the highest tree is 18 feet below the glide angle, which the Authority regards as a safe glide angle. Not infrequently defendant's planes passed over plaintiffs' property at approximately these heights. On

some occasions the backwash from the propellers blew the dead leaves off the trees.

The heavy, four-motored military planes in landing and taking off over plaintiffs' property necessarily came closer to the 30 to 1 glide angle than the lighter planes which usually rise to and reach a higher angle.

10. Since July 1943 the records show four accidents as having occurred at or in the vicinity of the airport:

A Navy plane fell about 2½ miles northeast of the airport September 13, 1943. This plane ran into a house and five persons were killed.

A Navy plane fell approximately one mile away at the Lindley Nursery place. The pilot was killed.

A Navy Beech aircraft landed on southwest runway with its wheels up October 28, 1943.

An Army aircraft failed in its attempt to take off and ran into a ditch.

11. The proof shows that prior to the time that the United States began operations at the Greensboro-High Point Authority Airport in May 1942 the greater proportion of planes landing and taking off from the airport were civilian planes, being light aircraft. Mail planes sometime prior to that date inaugurated mail service.

These planes are much lighter than the heavy four-
12 motored Army and Navy planes. The angle at which these planes (except an occasional military plane) passed over plaintiffs' home and property was relatively high and not such as to cause plaintiffs serious concern.

Since the United States began operations about May 1942, its four-motored heavy Army and Navy bombers, the fighter and certain other planes of the heavier type, in taking off from and landing at this airport, have frequently passed over plaintiffs' property, their house, and chicken houses both day and night and, at times, in considerable numbers rather close together. They come close enough at times to appear to barely miss the tops of trees on the property and at times close enough to the

tops of the trees to cause the old leaves on the trees to fly off. The noise so close to the buildings is startling and at night the glare from the planes brightly lights up the immediate area.

The planes became more numerous after the Army began its operations and this situation has been continuous since that date. There is no evidence of an intention to use or of an intention not to use the airport for its heavy bombers after the termination of defendant's lease, other than the fact that defendant has the right to renew its lease only until six months after the end of the present emergency or until June 30, 1967, whichever date is the earlier.

12. The result of this situation, together with knowledge of the accidents that have occurred, is that the plaintiffs and their family have become nervous and frightened. At night they are frequently deprived of sleep. The peace and comfort of their home are seriously interfered with. Their property, for the same reason, has depreciated in value.

13. The proof shows that plaintiffs conducted a commercial breeding chicken farm from which they made a living. At first they had leghorn chickens, but this breed reacted so badly to the noise and glare of the planes that plaintiffs got rid of the leghorns and purchased another breed, which at first appeared to react better, but as the planes increased in number, with the attendant distraction, this breed also reacted badly and production fell off. Plaintiffs have picked up at times as many as 6 to 10 chickens a day killed by flying into the walls from fright caused by the planes. Plaintiffs have lost as many as 150 chickens killed in this manner. Plaintiffs finding themselves losing money gave up the chicken business. Chickens that had cost approximately $2.50 each to hatch and raise for production purposes were sold on the market for $1.50 each. This situation has destroyed the use of the property as a commercial chicken farm.

14. The value of plaintiffs' property that was destroyed and the value of the easement taken, together with the damage to the remainder of plaintiffs' property as a result of the taking of the easement, is $2,000.00. The date of the taking of the easement was June 1, 1942. (S.E.W.)

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiffs are entitled to recover $2,000.00.

It is therefore adjudged and ordered that the plaintiffs recover of the defendant the sum of two thousand dollars ($2,000.00).

Opinion

WHITAKER, *Judge*, delivered the opinion of the court:

Plaintiffs sue for the alleged taking by the defendant of their home and chicken farm which was adjacent to the Greensboro-High Point Municipal Airport. This airport was operated under an enabling Act of the North Carolina Legislature. It was used by commercial airliners, by private planes, and by military aircraft. The defendant used it under a lease which permitted its military airplanes to land on and take off from it, and to use one of the hangars on it and to have the exclusive use of 10 acres of land adjoining the hangar.

One of the runways on which the planes landed and took off ran in the direction of plaintiffs' home and chicken farm, so that planes using this runway passed directly over plaintiffs' property. All planes, both private and military, used this runway when the wind was blowing from a certain quarter.

Plaintiffs say that most of the planes using it passed over their house harmlessly at relatively high altitudes, but that the heavier of the military planes passed over it at so low an altitude as to seriously interfere with their possession and enjoyment of their property. They say that the chickens on their chicken farm lived in such a

state of fright that their fertility was greatly de-
14 creased, and that on frequent occasions they became so frightened that they blindly flew against the buildings and were killed. As a result they say they have had to sell their remaining chickens and abandon their property as a chicken farm. They also say that they themselves live in a state of constant uneasiness and that they are unable to sleep at night due to the noise of the planes passing over their house and to the glare of their lights. They continue, however, to occupy the property as a home.

The proof shows that plaintiffs' barn is 2,220 feet from the end of the paved portion of the northwest-southeast runway, the tallest tree is 2,230 feet from it, and plaintiffs' house is 2,275 feet from it. The elevation of plaintiffs' property is from five to six feet below that of the runway.

According to the rules and regulations of the Civil Aeronautics Authority, the ideal glide angle is not less than 30 to 1. This means that there must be no obstruction more than a foot high 30 feet from the end of the runway, and that the height of any obstruction must not exceed 1/30 of its distance from the end of the runway. This angle of glide is supposed to be safe under the worst conditions. The highest tree on plaintiffs' property is 18 feet below this glide angle, plaintiffs' barn is 63 feet below it, and plaintiffs' house is 67 feet below it. Not infrequently defendant's planes passed over plaintiffs' property at approximately these heights. On some occasions the backwash from the propellers blew the dead leaves off the trees.

Plaintiffs' testimony that the fertility of their chickens was so decreased, and that so many of them were killed as a result of fright that their business became so unprofitable that they had to abandon it, is not disputed; nor that the value of the property has greatly decreased. Nor is it disputed that all planes used the runway which passed over plaintiffs' property when the wind was blowing from a certain direction, nor that the defendant intended to continue to do so as long as it continued to use the airport.

The defendant does say that this runway was used only from 4 to 7 percent of the time, but it does not deny that it intended to continue to use it whenever the wind blew from a certain quarter, so long as it continued to use the airport.

The term of the lease began on June 1, 1942, and ran for a period of thirty days, but with the privilege of renewal until June 30, 1967, or until six months after the end of the present national emergency, whichever date was the earlier. It is still in force and defendant continues to use the airport.

The question is whether or not the passage of defendant's planes over plaintiffs' property at the stated heights above it, with the result stated, and its intention to continue to have them pass over it for an indefinite period, constitutes a taking.

Under the old common law doctrine of *cujus est solum ejus est usque ad coelum et ad inferos* a landowner not only owns the surface of his land, but also owns all that lies beneath the surface even to the bowels of the earth and all the air space above it even unto the periphery of the sky.

Under this doctrine any erection over the land of another, or any passage through the air space above it, is a trespass. So, if an adjoining landowner allows the eaves of his house to extend beyond his own property and over the land of another he has committed a trespass. Broom's Legal Maxims, 310; *Crouchurst v. Amersham Burial Board*, 4 Ex. D. 5, 10; *Ackerman, et al. v. Ellis*, 81 N. J. Law, 1, 79 Atl. 883. A telephone or telegraph company which stretches its wires over the land of another without permission is guilty of a trespass. *Butler v. Frontier Telephone Co.*, 186 N. Y. 486, 491; 79 N. E. 716. The shooting of guns over another's land is also a trespass, although the bullets do not land upon it. *Whittaker v. Stangvick, et al.*, 100 Minn. 386, 111 N. W. 295; *Restatement of the Law of Torts*, sec. 159.

However, especially since the days of airplanes, this common law doctrine has received substantial modification.

But even so, there can be no doubt that today a landowner owns the air space above his land as completely as he does the land itself or the minerals beneath it, at least insofar as it is necessary for his full and complete enjoyment of the land itself. So, he may erect buildings on his land to any desired depth or height, subject, of course, to necessary police regulations, and, subject, of course, to the right of eminent domain, he may prohibit the erection over it of any structures of any character or the passage over it of anything that interferes with his right to light, air, view, or the safe and peaceful occupation and enjoyment of his land. *Smith* v. *New England Aircraft Co.*, 270 Mass. 511, 170 N. E. 385, 69 A. L. R. 300; *Delta Air Corporation* v. *Kersey*, 193 Ga. 862, 20 S. E. (2d) 245; *Restatement of the Law of Torts*, sec. 194; *Pollock on Torts* (13th Ed.) p. 362; *Burdick's Law of Torts* (4th Ed.) 406; Act of May 20, 1926, c. 344, 44 Stat. 568, 574, sec. 10; 49 U. S. C. 180. Cf. *Northwest Airlines* v. *Minnesota*, 322 U. S. 292; *Hinman, et al.* v. *Pacific Air Transport Corp.*, 84 F. (2d) 755.

Under the facts of this case there can be no doubt that defendant has committed numerous trespasses upon plaintiffs' property. It has traversed many times the air space above their property at such an altitude and with planes of such a character as to seriously interfere with plaintiffs' use and enjoyment of their property, even to such an extent as to make it necessary for them to abandon it as a chicken farm.

A trespass upon the property of another, however, does not ordinarily constitute a taking, but if it is sufficiently frequent or if there is otherwise shown an intention to continue it at will, such continued trespasses or intention may amount to a taking, if they destroy the owner's use and enjoyment of his property. *Hurley* v. *Kincaid*, 285 U. S. 95, 103; *Jacobs* v. *United States*, 290 U. S. 13, 16; *Portsmouth Harbor Land & Hotel Co.* v. *United States*, 260 U. S. 327.

The case last cited was before the Supreme Court on three different occasions. Its first opinion was in a case

styled *Peabody v. United States*, 231 U. S. 530; its second in *Portsmouth Harbor Land & Hotel Co. v. United States*, 250 U. S. 1. Under the facts in the two former opinions the Supreme Court held that there had not been a taking. The case reported in 260 U. S. 327, came before the court upon a demurrer which had been sustained by this court. The facts stated in the petition were that the defendant had erected a fort on a strip of land immediately to the west of plaintiff's land and that it had planted guns therein which could be fired only over plaintiff's land; that a fire control tower had been erected for the firing of these guns, and that the defendant intended to fire them across plaintiff's land at will, with the result that it had been deprived of the use and enjoyment of its property. Of such a case the court said:

"* * * There is no doubt that a serious loss has been inflicted upon the claimant, as the public has been frightened off the premises by the imminence of the guns; and while it is decided that that and the previously existing elements of actual harm do not create a cause of action, it was assumed in the first decision that 'if the Government had installed its battery, not simply as a means of defense in war, but with the purpose and effect of subordinating the strip of land between the battery and the sea to the right and privilege of the Government to fire projectiles directly across it for the purpose of practice or otherwise, whenever it saw fit, in time of peace, with the result of depriving the owner of its profitable use, the imposition of such a servitude would constitute an appropriation of property for which compensation should be made.' 231 U. S. 535. That proposition we regard as clearly sound. The question is whether the petition before us presents the case supposed.

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* * * * *

"If the United States, with the admitted intent to fire across the claimants' land at will should fire a single shot or put a fire control upon the land, it well might be that the taking of a right would be complete. But even when the intent thus to make use of the claimants' property is

not admitted, while a single act may not be enough, a continuance of them in sufficient number and for a sufficient time may prove it. Every successive trespass adds to the force of the evidence. The establishment of a fire control is an indication of an abiding purpose. * * *"

The court held that the petition, alleging the facts set out above, did state a cause of action and our judgment sustaining the demurrer was reversed.

We think the case at bar is controlled by that case. In that case there had been no invasion of the land itself, and defendant had fired its guns across it but twice, but there was alleged an intention to fire over it at will, with the result that plaintiff had been deprived of its profitable use as a summer resort. Here there have been frequent invasions of the air space above plaintiffs' land, and the evidence shows an intention to continue these invasions whenever the wind blows in a certain direction. As a result plaintiffs have been deprived of the use of their property as a chicken farm.

In both cases, to paraphrase the Supreme Court's opinion in *Peabody* v. *United States*, *supra*, reiterated in *Portsmouth Harbor Land & Hotel Co.* v. *United States*, *supra*, a servitude has been imposed on the property which constitutes an appropriation of it. It was not a complete appropriation in either case, it is true. In both cases there was a taking only of the air space above plaintiffs' property, but this resulted in damage to the remainder of the property; and it is well settled that a plaintiff may recover not only the value of the part of his land which has been taken, but also the damage to the remainder resulting from the taking of a part of it. *Bauman* v. *Ross*, 167 U. S. 548, 574; *United States* v. *Grizzard*, 219 U. S. 180.

But, it is said that in the case at bar the evidence indicates that the defendant did not intend to permanently appropriate to its own use this easement over plaintiffs' property since it reserved the right to renew its lease on the airport only until June 30, 1967, or six months after the end of the present national emergency, whichever date

was earlier. Whether or not the defendant intended to appropriate unto itself a permanent or a temporary right to use the air space over plaintiffs' land, there was nevertheless a taking of it. *A. W. Duckett & Co. v. United States*, 266 U. S. 149; *Brigham v. Edmands*, 7 Gray (Mass.) 359; *McKeon v. New York, New Haven & Hartford Railroad Co.*, 75 Conn. 343, 53 Atl. 656, affirmed in a *per curiam* opinion in 189 U. S. 508; *Cavanagh v. Boston*, 139 Mass. 426, 1 N. E. 834; *Paine v. Savage*, 126 Maine 121, 136 Atl. 664, 51 A. L. R. 1194; *Steinhart v. Superior Court*, 137 Calif. 575, 70 Pac. 629; *Cape Girardeau v. Hunze*, 314 Mo. 438, 284 S. W. 471, 47 A. L. R. 25; *Norwood v. Sheen*, 126 Ohio State 482, 186 N. E. 102, 87 A. L. R. 1375. All of these cases are authority for the proposition that there has been a taking within the meaning of provisions of a constitution similar to the Federal Constitution entitling the owner to recover just compensation, although the taking is only temporary. Cf. *United States v. General Motors Corp.*, 323 U. S. 373.

But, we cannot conclude from the mere fact that the defendant reserved the right to renew its lease on the airport for a limited period, 25 years, or less if the national emergency did not last so long, that defendant intended to appropriate this easement unto itself only temporarily. Upon the expiration of its current lease on the airport defendant no doubt intended to make some sort of arrangement whereby it could use the airport for its military planes whenever it had occasion to do so.

At any rate, it seems clear to us that the defendant asserted the right to have its planes fly over plaintiffs' property as low as the stated heights whenever it chose to do so. We, therefore, think that the defendant appropriated this easement unto itself permanently, not temporarily, and that the plaintiffs are entitled to recover, if at all, on this basis.

19 The defendant also says that it is not liable because plaintiffs' land was taken, if at all, in the conduct of military operations in time of war, and for such a taking the defendant is not liable. This is quite

clearly erroneous. The plaintiffs are entitled to recover under the constitutional provision that private property shall not be taken without just compensation. This provision has the same validity in time of war as in time of peace. The Constitution is not set aside in time of war. Indeed, the restraints of that instrument are especially necessary when our ordinary respect for the rights of others is often consumed in the hot fire of the passions aroused by war.

Plaintiffs are not entitled to recover for the damage to their business, but they are entitled to recover the special value of the land due to its adaptability for use for this business. *Joslin Co.* v. *Providence*, 262 U. S. 668, 675; *Mitchell* v. *United States*, 267 U. S. 341; *Dominion Smelting & Refining Corp.* v. *United States*, 102 C. Cls. 281.

From all the testimony, we have concluded that the value of the property destroyed and of the easement taken and the damage to plaintiffs' property resulting from the taking of this easement is the sum of $2,000.00. A judgment in the nature of a jury verdict will be rendered for this amount. It is so ordered.

LITTLETON, *Judge*; and WHALEY, *Chief Justice*, concur.

MADDEN, *Judge*, dissenting:

I am unable to agree with the decision of the court for several reasons.

First. The court awards the plaintiffs $2,000, one-half the value of their property. This award can be justified only by assuming that the activities of the Government which are the basis for this suit are to be carried on permanently. There is no basis in the evidence for such an assumption. The Government's lease on the airport is to terminate six months after the end of the present national emergency. When the lease terminates, the plaintiffs' property will be just as useful and just as valuable as it was before the Government leased the airport in 1942. The plaintiffs will have their property, unimpaired, and also one-half of its value. Just compensation for a partial impairment of value for what will probably be

about four years' use does not amount to one-half of
20 the fee value of the property. After the Government has paid the judgment, it will have no way of recouping the money which it has been obliged to pay for a permanent right which it does not want and has no expectation of using. It will have nothing to sell, since the privilege of flying military planes at low altitudes over the plaintiffs' property could be of no use to anyone but the Government.

Second. I think that the Government has the right, at least in wartime, to have its military planes fly through the air space over a landowner's land, when the flights are at safe altitudes and are no more frequent than they were in this case. There is no question here of danger of physical contact with the plaintiffs' property. By recognized standards, the glide angles for even the heaviest of planes were such that they easily cleared the plaintiffs' buildings and trees. The Government's activities at the airport were conducted with great care, so that, in fact, the plaintiffs' property was no more subject to peril of physical contact than that of the countless persons throughout the country over whose homes planes fly at various heights. The harm to the plaintiffs' property resulted from the noise of planes, and, to a slight degree, from the lights of the occasional night flying planes. These annoyances are real, and may diminish the value of property. But all those whose property lies near a railroad, or a highway, or a street car line, suffer from these annoyances in varying degrees, and practically always without compensation, even though the owner of the annoying enterprise is a private or municipal corporation which is fully subject to suit.

When railroads were new, cattle in fields in sight and hearing of the trains were alarmed, thinking that the great moving objects would turn aside and harm them. Horses ran away at the sight and sound of a train or a threshing machine engine. The farmer's chickens have to get over being alarmed at the incredible racket of the tractor starting up suddenly in the shed adjoining the

chicken house. These sights and noises are a part of our world, and airplanes are now and will be to a greater degree, likewise a part of it. These disturbances should not be treated as torts, in the case of the airplane, any more than they are so treated in the case of the railroad or public highway.

Third. Assuming that what the Government did was a legal wrong, I do not think that it was a taking of
21 the plaintiffs' property. If not, the constitution and the statute defining our jurisdiction give the plaintiffs no right to recover. The nature of the court's judgment, an award of one-half the value of the property, would indicate that the compensation is for damage done to the property, rather than for taking it. The plaintiffs still have the property, and will have it after the judgment. They will also have, of course, the amount of the judgment. The court's method of resolution of this seeming contradiction is to say that the Government has taken, not the property or one-half or any part of it, but an easement in or through it. Then, the reasoning goes, the damage to the property may be appended to the interest taken, and thus included in the award made for the taking. I recognize that if the Government takes a part of a man's land, and the effect of the taking is to damage the part not taken, as, for example, by depriving it of access to a road, the incidental damage may be recovered in the suit for the taking.

The court's conclusion that an easement of flight was taken is, I think, erroneous. As I have said, I think the Government had the privilege, at least during the war, of making the flights which it has made. If so, it needed no granted easement and cannot be regarded as having taken one by doing what it had the right to do. And if it did not have the right to make the flights, I have difficulty in determining the nature of the easement which it took and should pay for. If the flights were, as the court's opinion must assume, trespasses, they would, if the defendant were an ordinary litigant, be the subject of a damage suit for past damages, and an injunction against repetition. But

the fact that an ordinary person had committed trespasses on the plaintiffs' land in the past would not give the plaintiffs a right to sue the trespasser as if he had taken the land, or an easement in it, and make him pay the permanent value of the land or the easement. There is no such doctrine of the conversion of land to one's own use by taking liberties with it, as there is in regard to personal property. Hence the plaintiffs could get no such remedy against a private defendant as they are being given here. It seems then as if the court is, by way of compensation to the plaintiffs for the fact that the Government is not suable in tort, giving them a remedy against the Government by way of compensation for property taken, which in its nature, and especially in the amount of the recovery, differs completely from any remedy the plaintiffs might have against a private litigant.

22

There might be justification for this stretching of legal doctrine if there was any showing of an intention on the part of the Government to make permanent use of the plaintiffs' land. But, as I have said, the Government's lease on the airport ends six months after the end of the war. Hence it is having a permanent easement forced upon it which it has no use for and should not be obliged to pay for. In the case of *Portsmouth Harbor Land and Hotel Co.* v. *United States*, 260 U. S. 327, the court held that if the Government's installation of a coastal defense battery was with the intent of maintaining it there in time of peace, and firing projectiles across the plaintiffs' land whenever it chose to do so, that would constitute a taking for which compensation should be made, but if it was merely placed as a defensive measure in time of war, it would not constitute a taking. This decision supports the idea which I have expressed above that the Government is privileged to carry on activities in wartime which may be harmful to land owners, which activities would not be privileged in time of peace. But I suppose it also shows the court's reluctance to saddle upon the Government the burden of paying the permanent value of land

or interests in land for which it has no desire or use, it merely needing the use for the temporary period of the emergency. I think, therefore, that if the court concludes that the Government's repeated trespasses amount to the taking of an easement, it should award compensation for that easement, and for the incidental damage to the land, only down to the time of judgment, and should retain the case for the award of further compensation when the Government's use of the airport, and its easement, terminate at the end of the war. In this way the court could avoid compensating the plaintiffs in an amount several times as great as any loss which they will, in all probability, suffer.

JONES, *Judge*, took no part in the decision of this case.

23 *Judgment of the court—June 4, 1945*

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiffs are entitled to recover $2,000.00.

It is therefore adjudged and ordered that the plaintiffs recover of the defendant the sum of two thousand dollars ($2,000.00).

25 *Proceedings after entry of judgment*

On July 24, 1945, the defendant filed a motion for new trial.

On October 1, 1945, the court entered the following order on said motion:

ORDER

Defendant's motion for a new trial is overruled. The court on its own motion makes the following addition to finding 14, to be added at the conclusion thereof, to wit: "The date of the taking of the easement was June 1, 1942," with this amendment the findings, conclusion of law and opinion to remain unchanged.

On November 14, 1945, defendant filed application for transcription of record in re certiorari, which is as follows:

"Now comes the defendant by its Acting Attorney General, and requests that it be furnished with a certified transcript of the record in the above-entitled case. Pursuant to Rule 99b of this Court, there are filed herewith a copy of defendant's petition for a writ of certiorari and copies of the complete transcript of testimony and all exhibits."

J. EDWARD WILLIAMS,
Acting Assistant Attorney General.

MARVIN J. SONOSKY, *Attorney.*

29 *Order Settling and Approving Transcript of Record on Petition for Certiorari—Nov. 28, 1945.*

The defendant having presented to the court the within transcript from the original record of the court in the above-entitled case as that portion material to the errors assigned in its application for record on petition for certiorari, and the plaintiffs having made no objection thereto, the court upon consideration thereof finds the transcript to be an accurate statement of the portions of the original record material to the errors assigned, and orders the same on this twenty-eighth day of November, 1945, SETTLED and APPROVED.

By the Court.

Richard S. Whaley,
RICHARD S. WHALEY,
Chief Justice.

31 [Clerk's certificate to foregoing transcript omitted in printing.]

32 In the Court of Claims of the United States.
Washington, D. C.

IN THE MATTER OF CLAIM OF THOMAS LEE CAUSBY AND WIFE, TINIE CAUSBY, PLAINTIFFS *v.* THE UNITED STATES, DEFENDANT

TRANSCRIPT OF TESTIMONY

Testimony requested by defendant as material to errors assigned

33 GREENSBORO, N. C.

Monday, April 24, 1944—10 o'clock A.M.

The parties met, pursuant to notice of the Commissioner, at the time above stated, in the court room of the Federal Building, Greensboro, N. C.

Present: Honorable Neal L. Thompson, Commissioner; William E. Comer, Esq., counsel for plaintiffs, and Miss Mary Fagan, counsel for defendant.

Minnie Williams, a reporter, was thereupon sworn by the Commissioner to well and truly take down and transcribe the questions propounded to and the answers given by the witnesses, and to do all other things required of her by the Commissioner.

Pursuant to the order of reference by the Hon-
34 orable, the United States Court of Claims, in the above entitled cause, testimony on behalf of the plaintiffs was taken as follows:

Before the taking of the testimony was begun counsel for defendant moved the Commissioner for the enforcement of Rule No. 31 with reference to the segregation of witnesses, which said motion was granted and the witnesses segregated.

E. D. WARREN, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. Comer:

1. Q. Your name is Mr. E. D. Warren?

A. Yes sir.

2. Q. Where do you live, Mr. Warren?

A. 526 Highland Avenue, Greensboro, N. C.

3. Q. What business are you engaged in?

A. Real Estate.

4. Q. How long have you been so engaged?

A. Twenty years.

5. Q. Are you familiar with real estate values, both acreage and lot and city property?

A. Yes sir.

6. Q. Are you familiar with the tract of land and buildings of Thomas Lee Causby, the petitioner in this cause?

A. I have been over there; I have seen the property.

35 7. Q. Are you familiar with the property?

A. I am.

8. Q. Were you familiar with it prior to the time the runways were extended by the Airport?

A. I was.

9. Q. I believe you sold some property near there?

A. Sold a lot adjoining it.

10. Q. Now, Mr. Warren, on the theory of the value of this property but for the hazard which we complain of, do you have an opinion satisfactory to yourself as to the reasonable market value of it, and by that I mean the buildings, the land itself and other improvements. Answer whether you do or do not first.

A. I do.

11. Q. What do you consider the fair value of the land itself? The 2.8/10 acres?

A. Well, the land adjoining it right recently brought $400 an acre. I would say $1,200. You see I sold land adjoining for approximately the same figures.

12. Q. You say $1,200 is the fair value for the land itself?

A. That is right.

13. Q. What do you consider the fair value of the residence itself?

A. Well, if you could duplicate it—of course you can't duplicate it today. Six rooms there—

36 14. Q. If you have an opinion as to the value of the residence, state it.

A. Around $2,500.

15. Q. What in your opinion is the value of the outbuildings, and by that I mean all of the buildings except the residence, which includes some chicken houses, shelters, barn and other buildings, what would you say in your opinion the fair market value of those buildings is?

A. The fair market value,—and these are replacement values today—would run around $1,000. Of course they did not cost that much when they were built. You could not replace that property today. If you could it would run around $1,000 on account of the price of lumber and stuff like that.

16. Q. Did you see the property a few days ago and examine it?

A. I did.

17. Now tell the Court about the water connections there with reference to these other buildings, etc.?

A. He has a deep well; has a water pump to pump the water to the outbuildings, and a complete bath in the house.

18. Q. What do you consider the value of the improvements with respect to the water well, the piping to the buildings, the connections, etc.

A. I would say that water system cost him $1,000 to put in there, and it will cost him two or three times
37 that to do it today, and then the piping, the bath room fixtures, etc. would certainly cost considerable.

19. Q. While you were out there did you see any planes pass over this property?

A. I did.

20. Q. How long were you out there on the last inspection?

A. About 30 minutes.

21. Q. In your opinion about how many planes passed over this property in the 30 minutes' period you were out there?

A. Three went over in the 30 minutes I was out there; one bomber and two small planes.

22. Q. Do you recall whether or not the bomber went immediately over the house?

A. It did.

23. Q. Have you been out there on other occasions and observed planes either taking off in that direction or coming in in that direction?

A. Been several times along the road there.

24. Q. If you know, how near have you seen the bombers come to the house and to the trees?

Objection by counsel for defendant for that it calls for an opinion and conclusion by the witness, and the witness is not qualified to give an opinion.

Objection overruled.

A. Well, when we were out there the other day it went a little over the edge, the edge of the top of the trees. Looked like four or five feet above the trees there right beside the house.

38 25. Q. Have you seen other cases when they went that close?

A. I have seen other cases in just off the end of the runway. I don't know how close the runway is to the house, just about 1,000 feet or more, but as they come off the runway they come up to the house there.

26. Q. Now small planes, I understand they go higher?

A. They go higher, yes sir.

27. Q. I believe you stated that the house has six rooms?

A. That is what it is counted, six rooms.

28. Q. Painted house?

A. Painted and ceiled, and a complete bath.

29. Q. I haven't asked you this, did you know Mr. Causby was in the chicken business there?

A. I did.

30. Q. Do you know anything about the extent of his business?

A. No sir, I just knew he was in the chicken business.

31. Q. Is he in that business now?

A. No, no chickens out there except three or four or five.

32. Q. Do you know about the time he moved away and remained away something like two and a half months?

A. I don't know how long he stayed away, but he did move away.

33. Q. Do you know whether or not he has been trying to get some place to move to?

A. Been to me two or three different times to get property.

39 34. Q. State whether or not you have heard Mr. Causby complain about conditions out there?

Objection by counsel for defendant.

Objection sustained.

Mr. COMER. Would Your Honor hold if he went on the stand first it would not be competent to corroborate him? I want to say to Your Honor that I am not very familiar with the rules of this court. Under our State law it would be competent on the theory of corroboration. I am not insisting upon it. I do not want to argue the competency of it at this time.

Exception by plaintiffs.

Mr. COMER. The petitioners would offer to prove by this witness that Mr. Causby, the petitioner in the cause, has complained at various times about the conditions existing on his property which tended to make the home uninhabitable.

The COMMISSIONER. Has complained to this witness?

Mr. COMER. Yes sir.

The COMMISSIONER. Does Highway 421 run east or west of this property?

The WITNESS. I would say it run south of it, looks like to me. Road runs east and west.

Mr. COMER. 421 runs from Greensboro to Winston-Salem, almost east and west.

40 The COMMISSIONER. Is the highway on the north or the south side of the property?

The WITNESS: It is on the south side.

Cross-examination for Defendant by Miss EVAN:

35. Q. Now, Mr. Warren, do you know the date of the construction of this building?

A. No, I don't.

36. Q. Well, do you think you could give us approximately the date of the construction of this building?

A. Well, I sold property on both sides of this dwelling, on the east side, and sold vacant property on the west, but time goes on so fast as we get older, looks like around six or seven years old. I wouldn't say exactly.

37. Q. Have you taken the depreciation value into consideration in the estimate you have placed upon the value of the building?

A. The building is not old enough to hurt.

38. Q. It is six or seven years old?

A. Yes, but he has kept the building painted and kept it in good shape. I would say it could not be replaced.

39. Q. Then you are basing your estimate as to the value of the building on the replacement cost today in view of war times?

A. That is what I am doing.

41 40. Q. Let us suggest that you disregard the replacement and give us an estimate upon the value of the buildings as of two years ago.

Objection by the plaintiffs.

The COMMISSIONER: That is a legitimate field of cross examination.

Objection withdrawn.

41. Q. Disregarding the question of immediate emergency or replacement or current cost, give us an estimate of the value of the building as of two years ago.

A. Well the cost I haven't built any. I don't know how to figure two years ago. I expect to build two years ago that it would have cost. Building costs two years ago wasn't as much as they are today.

42. Q. But you are placing in the estimate of that valuation, you are taking into consideration what that building would be worth in replacement today?

A. That is right.

43. Q. How much would you say that value on the dwelling of $2500, how much of that would you say in your estimation is the increased cost of replacement today?

A. I would say the cost of the building—I am talking about the whole lot—the cost would be $500 to $700 within two years.

44. Q. You have taken that into consideration in your estimation of the value of the building?

A. Yes.

42 45. Q. In regard to the land, would you say the valuation which you have placed on the land of $400 has been changed by the increase in the cost of replacement, etc.?

A. No, that land lying along there, the County and the State bought the Airport and paid $400 and $500 per acre for the land up and down the road. I sold land on both sides adjoining this property I would say seven years ago, and I got $1,000 or $1100 seven or eight years ago.

46. Q. Would you say this land lost in value or increased in value by reason of the Airport?

A. Well, the demand for it—not any for sale, I would say that.

47. Q. The demand is greater today than it was then?

A. None out there for sale the Oil Terminal bought everything out there.

48. Q. So the lack of available land for sale close to the Airport has increased its value?

A. That is right.

F. S. Miles, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination by Mr. Comer:

1. Q. Mr. Miles, where do you live?

A. 312 West Sycamore street, Greensboro, N. C.

43 2. Q. How long have you been engaged in the real estate business?

A. Twenty years.

3. Q. During that time have you had quite a bit of experience in selling and pricing both city and rural property?

A. Yes sir.

4. Q. Are you familiar with the property of Thomas L. Causby and wife located west of Greensboro this side of the Airport?

A. I am.

5. Q. Have you inspected the property recently along with Mr. Warren?

A. Yes sir.

6. Q. Had you seen the property prior to that time?

A. Oh yes, lots of times.

7. Q. Did you make an investigation of the buildings and improvements on this property?

A. I did.

8. Q. Were you familiar with the property prior to the time the runways were extended by the Airport?

A. Yes sir.

9. Q. Do you have an opinion satisfactory to yourself, Mr. Miles, as to the value of the building, that is the residence itself, the outbuildings, and the other improvements, the water connections, etc.?

A. Yes sir, I have.

44 10. Q. In your opinion what is the value of the land itself?

A. $1200.

11. Q. In your opinion now, I am basing this increase of the value of the land not considering the hazard complained of, but the value under ordinary conditions, but for this hazard, is that the way you make your statement?

A. Yes sir.

12. Q. What in your opinion is the reasonable value of the residence?

A. $2,500.

13. Q. In your opinion what is the value of the water connections and the various chicken houses and other out buildings?

A. $1,000.

14. Q. While you were out there, Mr. Miles, did you see any planes pass over the property?

A. Yes sir, I saw one large one and two small ones.

15. Q. Have you seen planes pass over the property prior to this time when you were out there?

A. I don't know; I wouldn't say I have, but I never made any special notice there.

16. Q. You know where the end of the runway is?

A. Yes sir.

17. Q. State whether or not this large plane you speak of passed directly over the house?

A. It did.

45 18. Q. State whether or not the house is in the direct path of what the engineers term the angle of glide?

A. It is, goes right over the house, directly over the house.

19. Q. That is the eastern runway?

A. Eastern runway, yes sir.

Cross-examination for Defendant by Miss FAGAN:

20. Q. Mr. Miles, in taking into consideration your estimate of the reasonable market value of this property, are you placing it on the present cost of replacement or the difficulty of replacement?

A. I am basing it on what it might have been two years ago.

21. Q. Without taking into consideration the difficulty of replacement of property at this time under present war time conditions?

A. I know it would be hard to replace now, couldn't do it.

22. Q. You have not taken that into consideration in placing your estimate upon the value of the property?

A. No sir.

23. Q. Regarding those planes you saw go over, do you know what type of planes they were?

A. I am not familiar with the different types of planes. I know large planes when I see them.

24. Q. Do you know whether the planes belonged to the Army—the large plane—do you know whether that plane belonged to the Army, or whether it was a Navy plane, or an Eastern Airline plane, or whether it was a private plane?

A. It wasn't a private plane nor an Eastern Airline plane.

25. Q. You don't know whether it belonged to the Army, the Navy or the British government?

A. No.

26. Q. You know that airport is a municipal airport and is used by all types of planes?

A. Yes.

27. Q. Not used by the Army alone?

A. No.

Mr. COMER.

28. Q. Do you know also that prior to the time the Army took it over those large bombers didn't fly out there, you know that too, don't you?

A. Yes sir.

THOMAS LEE CAUSBY, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination by Mr. COMER:

1. Q. Mr. Causby, you are one of the petitioners in this cause?

A. Yes sir.

2. Q. Are you and your wife the owners of the property described in the petition, paragraph one?

A. Yes sir.

3. Q. I believe you set out in the petition that

Mr. Meredith holds an interest in your land in the amount of $900, is that right?

A. Yes sir.

4. Q. Is that a mortgage or a deed of trust?

A. It is a mortgage.

5. Q. Other than that do you owe anything on the property?

A. No sir.

6. Q. Mr. Causby, are you living in the property now?

A. Yes sir.

7. Q. Did you move away about the time this petition was filed?

A. Some time after.

8. Q. Where did you move to?

A. Went to Newport News.

9. Q. Why did you move?

A. We moved to get away from that place so that I could sleep a little at night.

10. Q. Why did you come back?

A. Because I could not stand that climate down there.

11. Q. In Virginia?

A. Yes sir.

12. Q. Where did you live in Virginia?

A. Newport News.

13. Q. State whether or not you have tried to get other locations here?

A. Yes sir, I have tried I reckon half a dozen or more real estate men to rent a place or buy one.

14. Q. Prior to approximately two years ago when these runways were extended were you bothered to any extent by private planes?

Counsel for defendant objects for that it calls for an opinion of the witness.

Mr. Cohen: I will change the question.

15. Q. About what time, if you recall, were the runways extended and this property taken over by the United States Government, if you know?

A. Well, I wouldn't know exactly, but it is approximately two years ago; might be a little less or a little more.

16. Q. Do you recall that the runways were extended on the property taken over there?

A. Yes sir.

17. Q. You think that happened about two years ago?

A. Yes sir.

18. Q. Now, before that time, state what the conditions were there with respect to your property and chicken business?

A. It was just a good place to live. I was making a living out of my chicken farm.

19. Q. Did the planes bother you at that time?

A. Some, but not like they have been since.

20. Q. Were there any large planes, bombers and other types of large planes at all that came over your house?

49 A. No, not then.

21. Q. Do you know about how far from the end of the runway it is now up to your house?

A. I just know what the United States engineers said. They said about 1500 feet from the house.

22. Q. Now, Mr. Causby, prior to the time they were extended how far was it, about how far?

A. Oh, it was 2700 or 3,000 feet.

23. Q. Now, Mr. Causby, I want you to state without prompting on my part just the conditions, how those planes and the operation of the planes have affected you and your family and your chicken business?

A. Well, completely put me out of the chicken business.

24. Q. While you are on that tell what occurred?

A. Well, when they went over at night the noise waked me up three to five times every night, and when they swooped down in there right over us it was bad. Lighted up the whole earth.—

25. Q. What happened to the chickens, you were telling about that?

A. They would jump off the roost, get excited and jumps against the side of the chicken house and the walls and burst themselves open and die. I have known it to be that I have taken out as high as six or 10 in one day.

26. Q. State whether or not that was soon after the War took it over?

A. Immediately after.

50 27. Q. What have you had to do with respect to your chickens?

A. I had to completely get rid of one strain, Leghorns. I bought another brood. They were not so bad, they were not so scared of the planes and the lights as the Leghorns. I got the other strain, I got along with them very well until they got up so many planes that it began to affect them. There was no way for me to fix the house to where it would protect them, nothing I could do about it, and I just got rid of them.

28. Q. What was the extent of your chicken business prior to the time you say the planes drove you out of that business?

A. I had a commercial breeding farm. I furnished hatcheries with eggs for hatching.

29. Q. About how many hens did you have?

A. I had approximately 400 breeders.

30. Q. State whether or not you were making a living out of the business?

A. Yes sir, I was making a comfortable living, had a good business.

31. Q. Did you do any other work on the side?

A. I worked a little on the side, other odd jobs.

32. Q. Now with respect to yourself and family, what was the immediate effect there after this property was taken over and the runways extended, how did it affect you and your family, explain that fully?

51 A. Well, as I started to say a while ago, when they went over at night they splashed the lights in and lighted up the whole earth, and the noise too. Well, it has affected us so bad I had to sell out and

make an attempt to get away from there. I have got everything I have made in the last eight years in it, and a man just can't go somewhere else.

33. Q. How many planes, approximately, would go over there during the day, the large planes, if you know?

A. Well, at spells some times five and up to 25 come in inside of an hour's time for a day and night.

34. Q. How near to the house did some of those or any of those planes come?

A. Well, I don't know how high the tops of the trees are above the house. I have seen them knock the leaves off the trees. That is last summer's leaves, not this year's.

35. Q. Describe other conditions that you have seen from planes going over the house?

A. In other words, I don't know how to explain it. I have stood there and watched and seringed for fear they were going into the house.

36. Q. State whether or not they veered any to miss the trees?

A. There is an open place between my house at the back and the front, open field. I have seen planes take off and they seen they were not going to make the tops of the trees and they would swerve when they would take off. When the breeze is coming from the south they take off that way. They come in that way all the time.

37. Q. Stat whether or not they come in at night?

A. They come in at night more than they do day time.

38. Q. What effect does that have on yourself and your family as to disturbing you in your sleep?

A. We put up with it a year before I ever done about it. The Government men told me how dangerous it was.

39. Q. You mean the engineers?

A. Yes sir, the engineers. I told them I could not stand it. I wanted them to do something about it. Whenever they seen I was right and knowed it was a fact.

everything I told them and showed them, when they seen that with their own eyes, they went off, left me, didn't do anything about it for six months, for six months before I ever attempted to do anything about making a claim of any sort.

40. Q. About when did you move out of the house?

A. I moved away the first of January, about the first of January.

The COMMISSIONER. 1944?

The WITNESS. Yes sir.

Mr. COMER.

41. Q. Take your family with you?

A. Yes sir.

42. Q. How many do you have in family?

A. Me and my wife and little boy, my son's wife and their baby.

53 43. Q. Where is your son?

A. In England.

44. Q. His wife and their baby live with you?

A. Yes sir.

45. Q. Is she here?

A. No sir.

46. Q. Will she be here when we need her?

A. Yes sir, she will be here.

47. Q. I don't believe I asked you this, it is a little out of order. When did you give up your chicken business, dispose of that?

A. Some time in December I think.

48. Q. And since that time have you been able to operate or have you tried to operate any chicken business out there at all?

A. No sir, I haven't tried to operate.

49. Q. What do you consider the fair value of the loss of your chicken business there, if you have an opinion?

A. Well, I estimated it the best I could, it is a hard proposition to make an accurate estimate, but I would say $1,000.

50. Q. Now, Mr. Causby, do you know what is meant by the angle of glide?

A. I have been told enough, I ought to know.

51. Q. With respect to this runway, state whether or not your house and property are directly in line with the runway?

54 A. Well, we will just say this is the runway like that (Witness illustrates), the house is right square in the center. That is what the United States engineers showed with their own blueprints.

52. Q. Then you would say it is directly in line or in the angle of glide?

A. According to that hard surface and what they told me the place is directly in line; 1500 feet, the planes when they take off, and when they get in an angle they are somewhere right over the house.

53. Q. Do you know whether or not any planes have had forced landings near your house in the last few months?

A. One that I know of last year I believe it was, in November. It was right near the house. Two of the big Liberators struck out with one right behind the other. I was out in the yard and they came up over the top of the trees, that is one clipped the top of the trees and it went on. I didn't see any other one at that time. I was out there working on my chickens, it was Sunday, and shortly the cars on that road up there began to stop all along up there. My wife came out and asked me what was the matter.

Mr. COMER: Don't tell what she said.

Anyhow I says, "I am going up there and see what it is." I put on my coat and came out on the front porch. I looked up there and I seen them out there in that field with the tractor. I could not see the plane until

55 they got up there and went to pulling. I went up there and seen them pull it out of there. It got about that high (Witness indicates some height with his hands) off the ground and one of the motors went dead and down it went.

54. Q. How near your house?

A. Approximately half way between the end of the runway and our house.

55. Q. That would be about 800 feet, estimating it is 1600 feet?

A. Yes sir.

56. Q. It was about half way between?

A. Yes sir.

57. Q. Do you know of any others that have had forced landings or wrecks near the house?

A. I seen one hit the tree top and break in two and fall and burn up. That was before they cleaned out and cut off the trees out there. I was there in four minutes after it hit the ground.

58. Q. Was that near your house?

A. At the Lindley Nursery.

The COMMISSIONER. About how far from your house?

The WITNESS: About 1,000 feet from my house.

Mr. COMER:

59. Q. What was the effect of this experience with the planes coming in all hours of the night and the day, what further effect did that have on yourself and family, the health and happiness of yourself and family?

A. Well, after seeing the things like we have it is completely a nervous wreck, that is all the way I can put it.

60. Q. Do you recall a plane that struck a house somewhere near you or in that vicinity?

A. There was one struck a house on the northeast end of the runway and burned the house up. It hit the ground 300 feet before it hit the house.

61. Q. Do you know what happened?

A. I measured it.

62. Q. What happened to the house?

A. Well, the plane hit there and it went 200 feet before it hit the ground, went 300 feet before it hit the house, then went into the house.

63. Q. Anybody killed?

A. Three or four people. It burned the house up and killed the pilot.

64. Q. Of course you and your family heard about that?

A. I was there in five minutes after it hit.

65. Q. What further effect did that have on you and your household?

A. I wouldn't hardly be able to explain it, knowing so many planes were coming over me.

57 66. Q. Are you able to live in that house with any degree of peace of mind and satisfaction?

A. I would not think so.

67. Q. I believe you explained why you still live on there, that you had not been able to get any other place?

A. No sir, I have not.

68. Q. Are you able now to buy another place?

A. No sir.

69. Q. Are you able to pay rent on a place?

Objection by counsel for defendant.

Question withdrawn.

70. Q. I want to ask you a little bit about the property. When did you build that house, approximately, if you recall, when did you build it?

A. I believe it was in 1937.

71. Q. In 1937?

A. Yes sir.

72. Q. How many rooms in the house?

A. Well, six rooms.

73. Q. Does it have a bath?

A. Yes sir, hot and cold water.

74. Q. Painted house?

A. Yes sir.

75. Q. Now tell the Commissioner about the outbuildings if you can recall them. I wish you would describe

58 them as accurately as you can.

A. Well, I have got facilities in a chicken house.

76. Q. Describe the house?

A. Well, the houses take care of approximately 1,000 laying hens. I have never been able to fill them up to capacity on account of this handicap. I have got one build-

ing two stories high, 20 x 20, concrete, with automatic water system in it for chickens, two stories, metal roof, painted.

77. Q. What else?

A. I have got one brooder house that is ceiled, shingle roof on it, and I have got another chicken house 20 feet x 32 feet with what is called a combination roof that would take care of 250 chickens. Then I have another house 20 x 20, one story.

78. Q. Do you have water in all these houses?

A. Yes sir. I have got a feed house 10 x 10, and I have got a garage. Two rain shelters they call them, summer sheds.

79. Q. How about hog houses and wire fence?

A. Yes sir, I have got some hog houses and lots, wire fence.

80. Q. Now the water connections, what kind of a well do you have?

A. I have a drilled well not but about two years old, drilled about two years ago.

81. Q. Do you have a forced system?

A. Yes sir.

59 82. Q. Do you know about what it cost to put that water system in?

A. Including everything, cost me about $1,000.

83. Q. Now I notice, Mr. Causby, in your petition you stated it is a five room residence. What is your explanation about that one room, didn't you consider it a regular room, or is that an error?

A. Does it state five rooms? I just didn't count the other room.

84. Q. It is an error, it is a six room house?

A. Yes sir.

Mr. COMER. I would like to amend to that extent.

The COMMISSIONER. You can't amend before the Commissioner.

Mr. COMER. I will make that motion at the proper time.

Cross-examination for Defendant by Miss FAGAN:

85. Q. What date did you purchase this property, approximately?

A. I purchased the land in 1934 I believe.

86. Q. You built the house and the other buildings when?

A. Well, I didn't finish it until 1937.

87. Q. Now at the time you purchased the land and at the time you built the dwelling and the outbuildings the Greensboro-High Point Municipal Airport was located in the same place where it now is, wasn't there an airport there at the time you purchased the land and placed the buildings on it?

A. No Ma'am, that is what I investigated before I bought.

88. Q. There was no airport located there when you purchased this property?

A. There had been a little old landing field, and they said the Government had taken it and there never would be another airport.

89. Q. When was the Greensboro-High Point Airport placed there, if you know?

A. Approximately 12 months after I purchased this land they went to work on it there to build an airport.

90. Q. There was no landing field and no airport whatever there at the time you purchased the property?

A. There had been a landing field.

91. Q. Was there a landing field there then at the time you purchased the property?

A. No landing field there then, but there had been, and it was taken by the United States Government.

92. Q. Who told you that?

A. Well, I got that information from the authorities, they told me. I don't know whether they know or not.

93. Q. That was in 1934 when you purchased the land?

A. 1933 or 1934.

94. Q. That was what they told you then?

61 A. Yes Ma'am.

95. Q. You say 12 months afterwards they made the Airport?

A. Might have been a little more than 12 months.

96. Q. 12 or 15 months after you purchased the land then the Airport was started there?

A. Yes.

97. Q. Then you built the house in 1936 or 1937, you built the dwelling for habitation some time after the Airport was started there?

A. Yes, but it was such a small thing I didn't even know it was there.

98. Q. But the Airport was there?

A. They started to work on it.

99. Q. It is called the Greensboro-High Point Airport?

A. Yes.

100. Q. Now in all of the questions that have been propounded to you by your own counsel he has stated at the time this was taken over by the War Department or at the time it was taken over by the Army, and in answer to all those questions you have answered with that in the question. Now, do you know that Airport was taken over by the War Department or by the Army?

A. Well, if you will just let me answer that question in my own words or my own way I can tell you. The only thing i got to go by what the Government men told me. Came out there and stayed with me three weeks. They said they were the engineers and they took pictures.

62 101. Q. Who were those Government men?

A. One of them was Mr. Satterfield, and as for the names of the engineers I can't recall them.

102. Q. But some ones who said they were Government engineers?

A. Several groups.

103. Q. It is a fact, Mr. Causby, that that property belongs to Guilford County and to the Greensboro-High Point authorities, is that correct?

A. I don't know.

104. Q. But you have answered all your questions upon the assumption that it was taken over by the War Department or taken over by the Army. You do not know it has been taken over by the War Department or by the Army, do you?

A. I could not say, the only thing is what I have heard.

105. Q. You don't know that it was taken over by the

Army or that it was taken over by the War Department, and yet you have answered all your questions with that in them?

A. I assumed when the Government men was approaching me and talking to me they had something to do with it.

106. Q. You don't know that the Airport has been taken over by the Army or by the War Department?

A. No, just what I have been told.

107. Q. Isn't it a fact that from 1934 up until the present time private planes have been taking off from that landing field?

A. They have been taking off and coming in there.

108. Q. Approximately since 1934, you said about
63 12 months after you purchased the property?

A. Yes.

109. Q. During all that eight year period there have been private planes coming in and taking off from that Municipal Airport while you have been living there?

A. Yes Ma'am.

110. Q. And during that same period of time that Airport or that landing field has been used as a landing field for the Eastern Airlines and commercial airlines to take off and land, has it not?

A. Well, I would think so, I see them.

111. Q. You have seen individual planes and cub passenger planes land and take off from there?

A. I have seen private planes.

112. Q. Those planes you were talking about that clipped the top of the trees, were those planes that belonged to the Army or Navy, or were they planes that belonged to the Canadian Government, or planes that belonged to the British Government, or were they private planes, do you know?

A. It looked to me like they belonged to the Army.

113. Q. How could you tell?

A. They had U. S. Army on there. I suppose that is what that meant. The one that they drug out that fell in the field there.

114. Q. Drug out from the field?

A. Used the end of the runway to make a landing.

64 115. Q. You can tell from those coming over the tops of the trees what kind of planes they are?

A. Army planes, Navy planes, every kind of plane there is comes in out there.

116. Q. It is only Army planes you are kicking about?

A. It is all of them. I don't know one from the other only when I see the insignia on them.

117. Q. You can't tell as they come in whether it is an Army plane, or a Navy plane, or whether it belongs to the British or some other government?

A. I can detect the British planes from the others.

118. Q. British bombers come in and land?

A. None of them,—I have seen a few British.

119. Q. You can tell those?

A. Yes.

120. Q. Those don't disturb you?

A. Yes, all of the planes that come in disturb me, regardless of what character they are.

121. Q. Now, about this plane hitting the tree top, falling and burning up near the nursery and injuring some people, how far was that from your house?

A. That was over at the other end.

121. Q. Clear over on the other end of the runway?

A. I know, but the Airport runs like that [Witness illustrates], and it was over here. I expect it was a mile or more.

122. Q. That didn't go over this runway?

65 A. He came over my house. He didn't land. He had orders to land and he went over there and crashed.

123. Q. How do you know he had orders to land?

A. I know what they said.

124. Q. You don't know that?

A. I know whether they land or not. They said he had orders to land.

125. Q. Do you know what kind of a plane that was?

A. It was a Navy plane. I was looking right at it.

126. Q. You know the Navy planes do not belong to the War Department?

Objection by counsel for plaintiffs.

Overruled. Exception by plaintiffs.

A. I don't know.

127. Q. But when that plane landed that caused you so much mental anguish it was clear over at the other end of the landing field, not close to your house?

A. When it crashed?

128. Q. Yes?

A. Yes.

129. Q. Then it was not toward the end of the landing field that is close to your house, but at the other end of the landing field?

A. Yes.

130. Q. You talk about the extension of those runways, just explain that a little bit further, what you mean by that and tell us when it took place?

A. Well, I don't know that for a fact, I just know what I have heard.

131. Q. You don't know that?

A. I know what I have heard and what I have seen.

The COMMISSIONER. Do you know when the runway was extended?

The WITNESS. Supposed to be finished up about a year ago.

Miss FAGAN.

132. Q. Do you know those runways were extended?

A. Yes.

133. Q. Did you see them extend the runways?

A. Yes, I seen the men there working.

134. Q. Actually made an extension of the runways so that they were longer over toward your house than before?

A. Yes Ma'am.

135. Q. How much longer?

A. I could not say.

136. Q. You could estimate other distances, the length of the runway and the distance from the house. If you can

judge that you can judge the amount of the extension, if you paid that much attention to them?

A. I am trying to observe everything.

67 137. Q. About how many additional feet would you say were added on to this runway extension toward your house?

A. I don't know it for a fact, only just what I have heard. I heard about 500 feet. I didn't go over there.

138. Q. You do know an extension was put in there?

A. I just know what I have heard; they might not have extended it.

139. Q. You don't actually know those runways were ever extended, do you?

A. Well, I could not say for a fact.

140. Q. And yet every question you have answered which has been propounded to you by your counsel has been based upon the assumption that the runways have been extended.

The COMMISSIONER. That is not a question.

Miss FAGAN.

141. Q. Will you admit, Mr. Causby, that you don't know that there was ever any extension placed upon the runway which goes in the direction of your property?

A. Yes, I know they extended them, I seen it with my own eyes.

142. Q. Could you say, Mr. Causby, of your own personal knowledge, how many feet have been added on to the runway in the last two or three years?

A. I have told you I don't know only what I have heard. I have seen them up there working.

68 143. Q. You never examined it?

A. No, I didn't go up there and examine.

144. Q. You say you moved away approximately the first of January?

A. Yes.

145. Q. And what time did you return, I didn't catch that?

A. Last of February or the first of March.

146. Q. You were gone about two months?

A. Yes.

147. Q. Now in regard to this so-called profit that has been made from your chicken business, do you have any books and records as to the income from that chicken business, or is that just an estimate in your own mind?

A. I have got the records.

148. Q. Could you produce them?

A. Yes, I haven't got them with me, but if you want me to I could bring them down.

149. Q. At the time you sold out your chicken business, your chickens, did you sell them for less than you had purchased them for, did you take a loss on the business at the time of the sale of the chickens?

A. I sold them on the market for meat purposes and lost money on it.

150. Q. How did you determine you lost money on them?

69 A. They were worth about,—in other words, they cost about $2.50 a piece to produce them up to where they were, and when I sold them I got $1.50 a piece for them.

151. Q. How did you determine the production of them at $2.50 a piece?

A. I bought stock eggs, had been paying for them for a six months period and they hadn't produced anything.

152. Q. How much did you pay for them when you purchased them, you say you sold them at $1.50 each?

A. They were worth $2.50 each.

153. Q. How much did you pay for them when you bought them?

A. I bought them when they were in the eggshell.

154. Q. And raised them yourself?

A. Yes.

155. Q. You were not raising them for the purpose of selling them on the market?

A. No, I was raising them for breeding purposes.

156. Q. You knew you would have to sell them at some time to keep your stock rolling, didn't you?

Objection by counsel for plaintiffs.

A. Well, I don't know whether you know anything about chickens or not.

157. Q. I don't know much.

A. It would be hard for me to explain it. It takes an egg three weeks to hatch. Then you take the baby chicken, it takes a six months period before it ever produces anything, and costs about $2.50 for that period.

70 158. Q. About how many of those did you have when you sold them?

A. Approximately 400.

159. Q. You mentioned on your direct examination, Mr. Causby, that a Government man came out and told you how dangerous it was, would you place that any more definite than that as to time?

A. It was in May last.

160. Q. Last May, in 1943?

A. Yes.

161. Q. Who was that?

A. I could not call but one man's name, Mr. Satterfield.

162. Q. That the same man told you how dangerous it was?

A. Him and a bunch of others, several there.

163. Q. They were all with Mr. Satterfield when he told you?

A. No, they came at different times and different ones. They come up and come up. They said they were going to take everything I had was in the way. Whenever they seen it was a fact what I showed them and told them they went off and left me, and in order to save myself I had to do something.

Redirect examination for Plaintiffs by Mr. COMER:

164. Q. Did I understand they led you to believe they would assume or take over the property?

A. Yes sir.

71 165. Q. And that is why you waited so long before you brought any claim?

A. Yes sir.

166. Q. How many of those chickens were killed by knocking themselves against the wall?

A. Something over 150.

167. Q. 150 that you lost that way?

A. Yes sir.

168. Q. Now, Miss Fagan asked you about the conditions when it was a private airport, during that time did any bombers come over there?

A. No sir.

169. Q. Did any planes come close to the tree tops?

A. I seldom ever seen an air-plane.

170. Q. I believe you stated there was not any appreciable hazard or effect upon your nervous system at that time but that it occurred after those runways were extended, is that right?

A. Yes sir.

171. Q. So many questions were asked you about the runways. I ask you if it is not a matter of common knowledge that all the runways have been extended?

Objection by counsel for defendant.

Question stricken out.

172. Q. Have the other runways been extended to your knowledge, have they been extended too, if you know?

72 Mrs. TIXIE CAUSBY, a witness, produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Your name is Mrs. Tinie Causby?

A. Yes sir.

2. Q. You are the wife of Mrs. Thomas Lee Causby?

A. Yes sir.

3. Q. You and your husband own the property described in the petition, the property west of Greensboro?

A. Yes sir.

4. Q. Near Route 421?

A. Yes sir.

5. Q. Mrs. Causby, do you have some children?

A. I have one little boy at home.

6. Q. Do you have any others?

A. My grand baby at home.

7. Q. Do you have any other older children?

A. Yes, my daughter-in-law is there and lives with me, she had her baby.

8. Q. Who is her husband?

A. My son, Lewis Causby.

9. Q. Where is he?

73 A. In the Army in England.

10. Q. I believe your son and his wife have a little girl, your granddaughter?

A. Yes sir.

11. Q. How old is your other boy?

A. He is nine years old.

12. Q. Do I understand you just have two children?

A. I have three children. My daughter lives at Carolina Beach, she is not at home.

13. Q. And then the son in the Army and the little boy?

A. Yes sir.

14. Q. I want to ask you about the conditions prior to about something like two years ago as was testified to here, you were living at that same place at that time, were you?

A. Yes sir.

15. Q. Well now, the private planes that came over there, the private planes and others that came in, did they bother you to any extent at that time?

A. No sir.

16. Q. I mean with respect to the effect on your home and your nervous system, your nervous condition, if any?

A. No sir.

17. Q. Do you recall about when the Army planes and Navy planes began to use that field?

74 A. I don't exactly, it has been two years or more.

18. Q. Since then tell the Commissioner what has been since then, and what the effects have been?

A. Very bad for us once we stay at home, because it is probable for an hour or two one plane right after another, and they would swoop so close to the house it seemed they were taking the roof off. I have just scringed for it time and time again since that baby has been there. It can't hardly sleep day time or night time, it disturbs the baby so.

19. Q. State whether or not they disturb you?

A. At night they do. I have walked the floor for as much as 30 minutes to an hour at night when they would come one right after another. I would be so nervous I couldn't stay in bed.

20. Q. Have you been outside at time when they were going over?

A. Yes sir.

21. Q. How near, if you know, did some of the large planes come to the house or to the tree tops?

A. They came very close to the tree tops.

22. Q. What kind of trees are those around the house?

A. Mostly oak trees.

23. Q. Of medium height?

A. Yes sir.

24. Q. What has been the effect, from your observation, on the other members of the family, you spoke about the baby,—what has been the effect on the others?

A. Well, my husband, I can certainly speak for him, because he would go and lie down in day time, and one hour he was lying down the planes come in so fast 15 passed over. He said, "I got to get up and get out, I can't stand this."

25. Q. Have you heard, first, about when was that you spoke about when the 15 planes passed over in one hour?

A. About two years ago.

26. Q. Have you heard your daughter complain?

A. Yes. Last week she said to me, "Looks like to me we are going to be carried away by the planes." We would go out in the yard and watch the planes go over.

27. Q. The noise loud or how?

A. Large planes very loud.

28. Q. Something was said about the lights at night, what about that?

A. Light the whole house.

29. Q. Floods the house with light?

A. Yes sir.

30. Q. What is the effect of that on your sleeping?

A. I just notice it when they come up and know what it is, know that was the lights.

31. Q. Does that disturb you or not?

A. Well, I can't say it does; we are already disturbed by the noise.

76 32. Q. Was it that way before those runways were extended?

A. No, not so bad.

33. Q. Now, do you know about the chickens we allege in the petition were killed by flying against the walls?

A. Yes sir.

34. Q. About how many would you estimate were killed in that manner?

A. Well, I wouldn't be able to say, but I have stood and watched them jump against the wall and saw when they were bursted and I have seen him carry them off half a dozen at a time when they had died.

35. Q. That occur some time last year?

A. Yes sir.

36. Q. Were you present any time when your husband and some engineers were discussing this matter with your husband, Mr. Satterfield and some others?

A. Yes sir.

37. Q. Let me ask you this question: State whether or not you understood from their discussions, the engineers and Mr. Satterfield with your husband, that they expected to take your property over?

Objection by counsel for defendant for that it is irrelevant, incompetent and immaterial.

The COMMISSIONER: I think it is competent. Objection overruled.

77 38. Q. Did you understand that?

A. Yes sir, I did, and not only him, but others came with blueprints and showed me right in the back yard. He came and showed me the blueprint, showed me just where the house went. He said, "According to my blueprint every building you have got is directly in the runway and will have to be moved", and he was not the only one,—of course Mr. Satterfield; and about the trees, we explained to him that we felt like the trees were our only protection, and he finally agreed that they were, and without the trees it would be unlivable.

39. Q. About that time did they talk to you with reference to paying for the trees if they were cut or paying some damages?

A. Well, it was they would pay some damage.

40. Q. Of course you and your husband did not want that?

A. No, we felt like we needed the trees.

41. Q. Why did you move out and go to Virginia?

A. Well, we thought we would get a better place to live. We were so nervous we were obliged to have some rest, and we thought we would stay there a while.

42. Q. Are you able to live there with any degree of satisfaction?

A. No sir.

43. Q. What is the reason you are putting up with the conditions existing out there?

A. Haven't been able to find or buy another place.

44. Q. Are you able to pay for another place?

A. No sir.

78 45. Q. Now, going back to the question of the discussion as to the house being in the angle of glide or runway, can you recall any of the engineers names?

A. No sir, I can't.

46. Q. I believe you say you recall Mr. Satterfield was there?

A. Yes sir, first one.

47. Q. He didn't have a uniform on?

A. No, sir.

48. Q. He was a civilian?

A. Yes sir.

49. Q. Did he talk to you and your husband on other occasions or not?

A. He talked to him, but it was only twice that it was in my presence.

50. Q. Were the engineers with him when he talked to Mr. Causby?

A. Yes sir, they were in the yard by themselves, they were in the yard looking around. I was not with them.

51. Q. You waited about six months before you filed this claim after that?

A. Yes sir.

The COMMISSIONER. Did the engineers want to do anything else beside cut your trees?

The WITNESS. No, not at that time.

79 Mr. COMER.

52. Q. Mrs. Causby, do you know very much about the amount that he made out of the chickens, or would you know much about that?

A. I don't know just exactly. I did keep books for him for a while on it.

53. Q. Did your husband make a living out of that chicken business?

A. Yes sir, he made a living; that is all we had to look to for a living.

54. Q. He testified he raised chickens for breeding purposes, you mean you sold eggs to the hatcheries rather than for consumption?

A. Yes sir, that is right.

55. Q. Do they bring more when sold to the hatcheries for breeding purposes?

A. Yes sir.

56. Q. Of course when you produce eggs for hatching purposes it is necessary for you to keep cocks on the lot also?

A. Yes sir.

57. Q. About how many hens did you have on an average, laying hens?

A. Between 350 and 400, usually around 400.

80 Cross-examination for Defendant by Miss FAGAN:

58. Q. How tall, Mrs. Causby, if you know, or how high are the trees in your yard that you say the planes barely skimmed the tops or that the engineers as you say asked you to trim?

A. I don't know anything about estimating any height of anything. Just about the average height of a tree.

59. Q. You say that the engineers came and showed you these blueprints?

A. Yes.

60. Q. You said you didn't recall the names of them except Mr. Satterfield?

A. That is right.

61. Q. You don't know who any of the others were?

A. This other one showed me the blueprint, I don't know whether he was an engineer or not, but he was a contractor, getting a contract to cut the trees. I know he had the blueprint.

62. Q. They talked to you only with reference to trimming the trees?

A. Regarding the glide, this runway, they said.

63. Q. When was that?

A. Some time last year; I can't place the date; it was some time in the summer.

81 64. Q. Of 1943?

A. Yes, in the early summer.

65. Q. You have lived on the place, you yourself have occupied the dwelling on the place since it has been built.

A. Yes.

66. Q. You have lived on there since about 1936 or 1937?

A. Yes.

67. Q. Now, during all that period of time, let's say up to two years ago, prior to the time more Government or Army and Navy planes than formerly came in as you

say, the field was used as a municipal airport, is that correct?

A. The field was there, yes.

68. Q. There were private planes?

A. Yes.

69. Q. Also those large commercial planes landed there and took off?

A. I think only two a day.

70. Q. Do you know what they were?

A. I think it was Eastern Airline, only two a day.

71. Q. At the time you built your house in 1936 or 1937 you built it with the knowledge that the airport was there?

A. No, we didn't. We understood that the airport had been taken over, and that they would hardly ever put another one there. That is when we bought.

82 72. Q. At the time you built your dwelling the airport was operating?

A. Just used as a little landing field.

73. Q. It was being used as a landing field at the time the house was built?

A. Just small planes.

74. Q. Did you know at that time yourself to whom this airport and field belonged?

A. No, I didn't.

75. Q. Now, these planes that you say have gone over the house, do you know of your own personal knowledge whether they were Army planes, Navy planes, or whether they belonged to the Canadian Government, or the British Government?

A. To the best of my knowledge the large ones were Army planes, and the Navy planes seem to be of a smaller type. It appears to me that the large ones are the Army planes.

76. Q. Are there private planes and commercial airlines using that field?

A. The Eastern Airline uses it. I don't know if the private planes use it now or not. I was told they were going to stop them and not let private planes come in.

77. Q. You still see them out there?
A. Occasionally I see a few.

83 Redirect examination for Plaintiffs by Mr. COMER:

78. Q. Mrs. Causby, I failed to ask you about those planes that fell near the house, do you recall those planes?
A. Yes sir.
79. Q. About when was it, if you recall, that you say one was forced to land or fell near your house?
A. That was last summer, kind of in the fall like.
80. Q. How close to your house was that?
A. Just as I said, I am not so much at estimating distances, but it was between the house and the end of the runway.
81. Q. What effect did that have on you coupled with those other things?
A. Well, it made me kinder nervous. I began to shake, thinking that if it had been a little bit further it would have been right in the house. It made me kinder nervous.
82. Q. Did you hear about the others?
A. Yes sir.
83. Q. Tell about that?
A. One fell about a mile in the other direction.
84. Q. How many did it kill, if any?
A. The mother and three children, a little boy and two girls.
85. Q. Well, explain to the Commissioner what effect that had, coupled with the other conditions, on your nervous system?
84 A. I can't say, just made me plain nervous. I had to take sleeping pills.
86. Q. Do you usually have to take sleeping pills?
A. Not unless something exciting happens around there.
87. Q. Did you hear about another one that fell shortly in the past?
A. No sir, it has been over a year since one went down, before they cleared Lindley's property.

Re-cross-examination for Defendant by Miss FAGAN:

88. Q. This plane that fell last summer at the other end of the airport away from your house, you don't know whether that was an Army plane or a Navy plane?

A. They said it was a Navy plane. I saw groups of fellows came from the field that went over there.

88. Q. You don't know whether that plane attempted to fly in that direction or whether it attempted to land or take off?

A. I was told by the authorities around there that it was attempting to land at the Airport; anyway, it happened between five and six o'clock in the evening. I heard the plane around the house making a big noise unusual from other planes, but did not think anything about it. In a little while they came in and said why that plane had crashed over there and gone through this house. Mr. Causby came in. He was awfully nervous. My son I remember he came in with his daddy, not even talking to him, because
85. he saw them when they picked up the pilot. He just pleaded with his daddy not to talk about it even because he saw them when they picked up the pilot.

90. Q. Do you know whether or not that plane was using this particular airport or happened to be going over?

A. They said his intentions were to land.

Re-re-direct examination for Plaintiffs by Mr. COMER:

91. Q. You say your son was there at the time?

A. Yes sir, he was there. He just pleaded with his daddy not to talk about it because it was to awful. He was in uniform and he got closer and seen the pilot when they were picking him up, and he said don't talk about it in the home.

92. Q. Was the pilot killed too?

A. Yes sir.

93. Q. You think four people were killed in the house, three or four?

A. I believe, as well as I remember,—wasn't there a little girl and boy and the mother and this girl fixing to go to

college the next day? She was on the back porch pressing her clothes. As well as I remember there were four.

86 W. P. ALBRIGHT, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Your name is W. P. Albright?
A. Yes sir.
2. Q. You live in Greensboro?
A. Yes sir.
3. Q. Have you on frequent occasions been out to the property occupied by Thomas Lee Causby?
A. Several times.
4. Q. I believe you dealt with him some in connection with the chicken business?
A. Yes sir, that is correct.
5. Q. Have you been out there during the past year?
A. Several times, yes sir.
6. Q. I want you to explain the conditions there with respect to planes going over this property?
Objection by counsel for defendant.
7. Q. I will make it a little more specific. State whether or not you have seen planes of all types coming in and going out over this property?
A. Yes sir, I have seen planes, such as the type they have at the field.

87 8. Q. Where is this house located with respect to the eastern runway?
A. If I am thinking of the property runway, it would go right at the house, go right where the house is located.
9. Q. Do you know whether or not the runways have been extended?
A. I know some of them have, yes sir.
10. Q. Have you ever talked to Mr. Causby about this yourself?
A. I have.

11. Q. State whether or not he has complained to you about the conditions out there?

Objection by counsel for defendant.

Question withdrawn.

12. Q. Knowing the conditions as you do, do you consider that house inhabitable within any degree of satisfaction?

Objection by counsel for defendant for that the question calls for an opinion and conclusion on the part of the witness, and the witness is not qualified to give an opinion; and further, for that the question is incompetent, irrelevant and immaterial.

The COMMISSIONER. I think you can show it by facts, not merely his conclusion. He has stated heretofore that he has been out there.

13. Q. About how near the house do some of those planes go?

A. Fly very low in my judgment, just barely clip the tree tops.

88 The COMMISSIONER: How high are those trees over the top of the house, if you know?

The WITNESS. In my estimation, the tallest trees there are in the neighborhood of 50 or 60 feet. I would not call them extremely large oaks.

Mr. COMER.

14. Q. You say those planes came close to the tops of the trees?

A. Yes sir.

15. Q. Did you ever see one clip the leaves?

A. I never observed that, no sir.

16. Q. Do you know about his chicken business, Mr. Albright?

A. Yes sir, I bought hatching eggs from Mr. Causby.

17. Q. Do they sell at a higher price than eggs for consumption for food?

A. Yes sir.

18. Q. What was the nature of his chicken business and the extent of it as you observed it?

A. I have bought hatching eggs just as we could sell

chickens of course, and that extended for the full year last season and we would go up and get eggs from him for quite a while, and those eggs were running 10 or 15c beyond the market price a dozen, and you figure that through a period of 52 weeks and it amounts to quite a little sum. On
80 numerous occasions I would go up there for my flocks management. I never considered the other so much; I was thinking more or less from the standpoint of the management of the flock.

19. Q. Did he tell you anything about the loss of the chickens, anything about those killed flying against the wall?

Counsel for defendant objects for that it would be hearsay.

The COMMISSIONER. Self serving statement.

A. I don't think he told me anything about that.

No cross-examination.

WALTER COBLE, a witness produced on behalf of the plaintiff, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Your name is Walter Coble?

A. Yes sir.

2. Q. Where do you live?

A. I live at the end of the northeast runway at the Airport.

3. Q. Here in Greensboro?

A. Yes sir.

4. Q. You live on the western and he lives on the eastern?

A. I live on the northeast and he lives on the east.

90 5. Q. Are you familiar with the conditions out at the Airport say during the past two years since the Army and Navy planes have been using the field?

A. I have been living out there since 1919.

6. Q. About how far, if you know, are you from the runway?

A. About 1700 feet I think it is.

7. Q. Have you observed planes on this eastern runway passing over the Causby property?

A. I have seen them a few times. Been there and seen them take off.

8. Q. Is the house in the angle of glide or path of planes using that runway?

A. I think it is.

9. Q. Has that eastern runway been extended leading toward Causby's house?

A. Yes sir.

10. Q. About when, if you know?

A. Last year.

11. Q. You know it was extended?

A. Yes sir.

12. Q. Were the others extended?

A. Yes sir.

13. Q. About how close or near the house or the tops of the trees have you seen those planes go?

A. I can't say over there. I can say how close they come to our place.

14. Q. State whether or not they do go close
91 to the trees or to the house?

A. Well, some of them pass over our place just as high as the dairy barn.

Motion by counsel for defendant to strike out the answer.

15. Q. I will ask you to state if you know whether they do go close to the Causby house?

Objection by counsel for defendant for that it calls for a conclusion by the witness, and for that it is irrelevant and immaterial.

The COMMISSIONER. He said he didn't know how close they came.

16. Q. Do you know how far it is from the end of the runway to the Causby property?

A. Only just what the Government officials told me.

17. Q. What was that?

A. About 1600 feet.

18. Q. You there when they measured it?

A. No sir.

19. Q. That is after it was extended?

A. Yes sir.

20. Q. Tell the Commissioner about those planes that fell, you know about those?

A. Yes sir.

21. Q. Where did the plane fall with respect to your property where the four people were killed?

92 A. About actually northest of me.

22. Q. That near the runway?

A. About a mile and a half from the end of the runway airline.

23. Q. Do you remember when that was?

A. First of September or latter part of August.

24. Q. Do you know what type of plane that was?

A. Navy plane.

25. Q. You went over there, did you?

A. Yes sir.

26. Q. Now, Mr. Coble, another thing I want to ask you, I wish you would state the conditions prior to two years ago, or prior to the time the Army and Navy began to use that field as to the number of planes, noise and closeness to this property and all property adjacent.

Objection by counsel for defendant for that it is incompetent, irrelevant and immaterial.

The COMMISSIONER. He is trying to show the conditions before and after.

A. Of course the high powered planes make considerable more noise than the small planes two years ago, small planes and little cub planes, not so many then.

27. Q. More rise and take off than then?

A. Four motor planes didn't take off two years ago.

28. Q. Do they now?

A. Yes sir?

93 29. Q. They come in now?

A. Yes sir.

30. Q. Do two motor planes come in and take off?
A. Yes sir.
31. Q. Do bombers take off, B-17 and 24?
A. Two motors and four motors.
32. Q. Did you see those come in prior to the time the Army took over the Airport?
A. Not four motors, but two motors did.
33. Q. I believe you say prior to that time cub planes operated out there?
A. Yes sir, and some eastern Airlines.

Cross-examination for Defendant by Miss FAGAN:

34. Q. Mr. Coble, do you know how long that Airport has been out there?
A. I don't remember exactly; it must have been built about 16 years ago.
35. Q. That would make it about 1933 or 1934?
A. Some time along then.
36. Q. It has been used constantly as an airport from that time to the present time?
A. Yes, I think so, some.
That is all.

94 D. L. MOTSINGER, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Where do you live, Mr. Motsinger?
A. I live just across in front of the Airport.
2. Q. You live on the left across the railroad?
A. On the left going up toward Winston-Salem.
3. Q. That would be south from the Airport, on the south side of the railroad and the south side of the highway?
A. Yes sir.
5. Q. Do you know Mr. and Mrs. Causby?

A. I know Mr. Causby, but I am not acquainted with his wife.

6. Q. You know their property, know where it is?

A. Yes sir.

7. Q. Do you recall about the time the runways were extended at that Airport?

A. Well, I know when it was done, but I don't remember just what time now.

8. Q. Were they extended?

A. Yes sir.

95 9. Q. Now, have you observed planes at different times either coming in or taking off over the Causby property?

A. Yes sir, we work down the road. Our farm is right across in the front, and we work down there right much. I have seen several come in and go out.

10. Q. That occur all times, day and night?

A. No, just spells they come in pretty rapid, and a lot of times none come in, the way I noticed it.

11. Q. See any come in at night?

A. Well, I see one once in a while, but I don't see much of them at night.

12. Q. You are over on the left?

A. Yes sir, we are on up the road.

13. Q. You are a considerable distance from the Causby property?

A. Yes sir.

14. Q. About how near the house or the tree tops have you seen them go over the house?

A. Well, I don't know. I have seen a few looked like they were not going to miss it.

15. Q. Is the Causby house in direct line with the eastern runway?

A. Pretty much so, yes sir.

96 Cross-examination for Defendant by Miss FAGAN:

16. Q. Mr. Motsinger, those planes you said you had seen go over the Causby property that looked like they were pretty close, do you know to whom those planes

belonged, whether the Army, the Navy, the Canadian or British Government, or whether they were private planes?

A. I don't know.

17. Q. Do you know whose they were?

A. They must have been Army planes, big heavy planes.

18. Q. Do you know whether they belonged to the United States Army, the British Army, the Navy, or whether they were private planes,—could you see the insignia on them?

A. No.

19. Q. You could not really say of your own personal knowledge what kind of planes they were?

A. Big heavy planes.

20. Q. That is all you know, big heavy planes?

A. Yes.

Redirect examination for Plaintiffs by Mr. COMER:

21. Q. Were they private planes?

A. No sir, Army planes.

22. Q. You know a private plane from an Army plane?

A. I think so.

97 23. Q. You know a cub plane?

A. Yes sir.

24. Q. They were not that, were they?

A. No sir, big Army planes.

25. Q. Four motors, some of them?

A. Yes sir, four motors some of them.

C. S. PLEASANTS, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified at follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Where do you live, Mr. Pleasants?

A. Guilford College.

2. Q. I believe you fly a plane yourself?

A. Yes sir, I have a little plane.

3. Q. Are you familiar with the conditions at this Airport, present conditions?

A. I think so.

4. Q. Do you recall about the time those runways were extended, approximately?

A. It was something around two years ago, I guess.

5. Q. You do know they were extended?

A. Oh yes, they were extended.

98 6. Q. Did those four motor bombers come in there before they were extended?

A. I don't think so, no sir.

7. Q. Are you familiar with the location of the Causby property?

A. Yes sir.

8. Q. Where is the property with reference to the eastern runway?

A. Well, it is just about in direct line with the runway. I believe in taking off the runway it would be mighty near in a direct line, I should say 1500 or 2,000 feet from the end of the runway.

9. Q. Have you seen planes on the field or in the air either taking off or coming in over the Causby property?

A. I have seen them coming in over it.

10. Q. How near would those large bombers or other large planes come to the tree tops?

A. I wouldn't think those large four motor Army planes could have very much altitude because they usually run them two or three hundred feet.

11. Q. Does it take more space for a bomber to rise than a small plane?

A. Yes sir.

12. Q. Is that the angle of glide?

A. They usually make a longer glide through the field than a light plane.

13. Q. Have you heard Mr. Causby complain about the conditions out there?

99 Objection by counsel for defendant for that it is incompetent, irrelevant and immaterial, and any answer given would be self-serving and hearsay.

Objection sustained.

Cross-examination for Defendant by Miss FAGAN:

14. Q. Mr. Pleasants, you stated those runways were extended about two years ago?

A. I would not say exactly; they were extended I should say not over three years ago.

15. Q. Are you sure those runways were extended?

A. They done some work on them.

16. Q. On the runways or just on the field?

A. They extended the field. I wouldn't say about the hard surface, but they extended the approach to the field; but so far as the hard surface is concerned, I know it was widened, I won't say about extending the hard surface because I don't know.

100 Mrs. MARGARET CAUSBY, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. You are Mrs. Margaret Causby?

A. Yes sir.

2. Q. Whom did you marry?

A. Lewis Causby.

3. Q. You married T. L. Causby's son?

A. Yes sir.

4. Q. Where is he now?

A. He is in the service in England.

5. Q. In what branch of the armed forces?

A. Field Artillery.

6. Q. When did you move to the home of your husband?

A. Last May.

7. Q. Where was your home originally?

A. Pittsburgh, Pennsylvania.

8. Q. Have you lived at the house west of Greensboro, the Causby home since May of last year, with the exception of the time you lived in Virginia?

A. Yes sir.

101 9. Q. I believe you have a child now?

A. Yes sir.

10. Q. How old is your child?

A. Seven months old.

11. Q. Of course you were not familiar with the premises before you married and moved there?

A. No, I was not.

12. Q. Where did you live when you first married?

A. Muskegon, Michigan.

13. Q. In May and since that time, Mrs. Causby, what have been the conditions relative to planes and noise on account of the planes passing over the house and near the house?

A. Well, when I first moved there they bothered me an awful lot. I had a hard time getting reconciled to them. They still disturb me, they wake me up if a low one goes over at night.

14. Q. How many go over at night?

A. I know I have heard four.

15. Q. State whether or not you hear them at various hours at night?

A. Some times they go quite frequently for an hour or so, and then will stop.

16. Q. Now during the day, state whether or not they go over frequently during the day?

A. Yes, quite frequently during the day.

102 17. Q. All types of planes?

A. Yes sir.

18. Q. How close do some of those big planes come to the house and those big trees around the house?

A. They seem to clip the trees some times.

19. Q. Have you seen them when you were out in the yard, observed them go over?

A. Yes sir.

20. Q. What effect, if any, does that have on your baby, the excitement from hearing those planes?

A. It wakes the baby up in the day time if she is asleep.

21. Q. Do they wake you and other members of the family up at times?

A. Yes, they do.

22. Q. Do you recall the time that a plane either fell or failed to rise between the house you live in and the end of the runway?

A. Yes, one did fall one Sunday.

23. Q. What effect did that have on you?

A. It made me realize how close we live to the Airport, and that something might fall in closer.

24. Q. Do you also recall where one fell on the other side and three or four people were killed?

A. Yes sir.

25. Q. Do you remember how many were killed, three or four?

A. No sir, I don't remember, I was in the hospital.

26. Q. You were in the hospital at the time?

A. Yes sir.

103 27. Q. So your didn't go to where it fell?

A. No sir, not until later.

28. Q. That about the time your child was born?

A. Yes, it was.

Cross-examination for Defendant by Miss FAGAN:

29. Q. Those planes you say go over at night, do you know what type of planes those are, whether they are planes belonging to individuals, or whether Navy planes or Army planes, or commercial airline planes, can you tell that at night?

A. No, I can't tell that.

30. Q. Do you know then whether those planes that you say wake you up and disturb you at night, whether those are planes belonging to the Army or some one else?

A. No sir.

Redirect examination for Plaintiffs by Mr. COMER:

30. Q. Do you know about those in the day time?

A. Yes sir.

31. Q. You know the difference in a small private plane and a bomber?

A. I think I do.

32. Q. Did you see the four engine planes go over the house?

A. Yes sir.

104 33. Q. The two engine planes?

A. Yes sir.

34. Q. and other big planes?

A. Yes sir.

35. Q. Do you know whether those were bomber planes or not?

A. I could tell some.

36. Q. You could tell some, that they were bomber planes?

A. Yes sir.

C. O. MEREDITH, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories, testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Where do you live, Mr. Meredith?

A. I live at Guilford College.

2. Q. Have you had occasion to examine and observe the conditions at the Airport, that is, near the property of Mr. Causby,—

A. Yes sir, I have observed the conditions and have a mortgage on the property.

3. Q. What conditions did you observe there, Mr. Meredith?

Counsel for defendant objects for that it is not definite enough.

The COMMISSIONER. If he states anything that is not competent I will strike it out.

A. I have known it before the runways were enlarged and since.

105 4. Q. Now, describe both?

A. Well, when I went up there to examine the place with reference to taking some papers I didn't notice any airplane disturbances,—well, they were not noticeable.

5. Q. That was how long ago?

A. Three or four years ago.

6. Q. Now, how has it been lately?

A. Well, at times it is unbearable.

Counsel for defendant moves that the answer be stricken out for that it is an opinion by the witness. Motion overruled.

7. Q. You may tell in what way it is unbearable?

A. Well, the noise of the planes and the lowness with which those large planes fly from my point of view. I was not interested in any way. I was just up there on some occasions and would see them come in. It was just frightening to me. I was not interested. I don't know that I am specially sensitive, but it looked scarey to me.

8. Q. About how close to the trees and the house did they pass?

A. They looked real low, just above the tree tops, apparently.

No cross-examination.

106 SAM TALBERT, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Are you a brother to the one runs the grocery?

A. I am the one that runs the grocery store.

2. Q. Where do you live now?

A. Guilford College.

3. Q. Do you know Mr. and Mrs. Causby?

A. Yes sir.

4. Q. Are you familiar with their property near the Airport?

A. Yes sir, I have been to their place.

5. Q. Been there when planes took off or came in over the property?

A. No sir, I have never been there when that was taking place.

6. Q. Do you know where their property is with reference to the eastern runway?

A. Directly in line with the runway.

7. Q. Has Mr. Causby ever complained to you about the conditions out there?

Counsel for defendant objects for that it is hearsay, self-serving declaration, incompetent, irrelevant and immaterial. Objection sustained. Exception by the plaintiffs.

107 8. Q. Do you know the character and reputation of Mr. Causby?

Objection by counsel for defendant for that it is incompetent, irrelevant and immaterial.

The COMMISSIONER. I will let him answer.

A. Yes, I do.

9. Q. What is his reputation?

A. I have known him for 10 years; his character is good.

No cross-examination.

F. S. SETZER, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Where do you live, Mr. Setzer?

A. At Guilford College.

2. Q. Guilford College is fairly close to the Airport, isn't it?

A. About four miles from the Airport.

3. Q. Do you know the property of Mr. Causby?

A. I know of it.

108 4. Q. Have you been there near the Airport and near Mr. Causby's property at the time when the planes were coming in or taking off?

A. Only once on the property.

5. Q. During that time did you see any planes taking off over the property?

A. Only one at that time.

6. Q. Was that a large plane?

A. No, I think a medium. What I call a medium size.

7. Q. Was it coming in or taking off?

A. Coming in and taking off.

8. Q. State whether or not it went over the property?

A. Yes sir.

9. Q. How close to the tree tops?

A. I don't know. I really paid no particular attention to it. We were out by the chicken house at that time and the chickens were jumping and splashing and going up against the side of the house and so on.

10. Q. They were?

A. Yes sir.

11. Q. Do you know whether any were killed at that time?

A. No, I don't think there were.

12. Q. You say they did jump against the side of the house?

A. Yes sir.

109 13. Q. Was that the only time you were there on the property?

A. The only time I recall, yes sir.

14. Q. This property is in a direct line with the runway, isn't it?

A. I would say so, yes sir.

No cross-examination.

J. H. Hinshaw, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiff by Mr. Comer:

1. Q. What are your initials, Mr. Hinshaw?

A. J. H. Hinshaw.

2. Q. Where do you live?

A. Guilford College.

3. Q. Do you know fairly well conditions at the Airport, particularly with reference to Mr. Causby's property?

A. I think so.

4. Q. Do you know the conditions there about something like two years ago when the Army and Navy planes began to use the Airport?

A. I think so. I owned a place this side of his place several years.

5. Q. Just tell me what the conditions were then?

110 A. Wasn't so many planes went out then, but they have extended the runways.

6. Q. After they extended the runways what were the conditions?

A. Well, he was right in line with the runway; it wasn't very desirable.

7. Q. Explain why it was not desirable?

A. Heavy plane would come in so low right over his home it would shake the tree tops and made a lot of noise.

8. Q. Do you know anything about it frightening his chickens, or were you out there during that time?

A. I was out there, but I don't know anything about the chickens.

9. Q. Were you ever there at night when the planes were coming in?

A. I don't know that I was.

10. Q. What type of planes do you have reference to that flew right over his home?

A. Heavy planes.

11. Q. Do you know whether Army or Navy planes?

A. Some of them Army planes.

12. Q. Any Navy planes?

A. I hardly know the difference.

13. Q. You do know the difference in the private planes and Army planes?

A. Yes sir, light planes get off out of the way.

14. Q. Don't take so long to take off?

A. No sir.

111 15. Q. On how many occasions have you been there and saw the planes shake the leaves as you have described?

A. Possibly there some three or four times a year.

16. Q. Did you ever pass there when some didn't come in,—did you see planes about every time you passed?

A. According to the wind. If the wind is fair they come this way.

17. Q. Did you see more than one in the space of five or 10 minutes?

A. Some times you would see 40 or 50 coming in.

18. Q. One after another?

A. That is right.

No cross-examination.

D. E. WARNER, a witness produced on behalf of the plaintiffs, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

Direct examination for Plaintiffs by Mr. COMER:

1. Q. Mr. Warner, where do you live?

A. Between Guilford College and Guilford Station.

2. Q. How near the Airport?

A. I expect it is three miles.

3. Q. Have you been around the Airport, and particularly around Mr. Causby's property and observed the conditions there during the past say two years?

112 A. Yes sir.

4. Q. Describe those conditions?

A. Well, when I first went up there I didn't notice so many planes,—I don't know that I noticed any.

5. Q. When was that?

A. Two or three years ago.

6. Q. Tell about that?

A. He had lots of chickens up there, and he would have a calf or two to sell, and a hog or two. At that time I was doing some hauling for him, taking hogs to the market and different things to the market, and then since Christmas I went up to get some hogs when he was selling out, took some to market. That is why I was up there.

7. Q. What did you observe?

A. Lots of planes going over. He told me that he would have to get away, so many planes going over.

Counsel for defendant objects to the answer and moves that the same be stricken out.

8. Q. What types of planes did you see go over his house?

A. Last time I was up there lots of heavy planes going over, two and four motors.

9. Q. How near to the tree tops would they go?

A. I don't know, just about low enough to hook the trees when they passed, the wind from the propellers, I saw that.

10. Q. Did you see it on more than one occasion?

A. Yes sir.

113 11. Q. Well, Mr. Warner, do you know that Mr. Causby did sell out and go out of the chicken business on account of the conditions out there?

Counsel for defendant objects for that the question calls for an opinion and conclusion by the witness, and further for that it is incompetent, irrelevant and immaterial.

12. Q. Do you know why he moved?

Counsel for defendant objects for that the question calls for an opinion by the witness, and further, for that it is incompetent, irrelevant and immaterial.

A. Yes.

The COMMISSIONER. How do you know?

The WITNESS. I was up there when he was doing business and I was up there when he was selling out, and he told me.

The COMMISSIONER. I will exclude that.

Mr. COMER.

13. Q. Do you know whether or not this condition affected his chicken business?

Counsel for defendant objects for that the question calls for an opinion and conclusion by the witness.

The COMMISSIONER. I will let him answer.

114 A. I saw chickens lying around at one time.

looked to me like he was going to have to do something.

14. Q. It did disturb the chicken business?

A. Yes sir.

15. Q. Do you know whether or not he did not only sell his chicken business out, but moved away for a while?

A. Yes sir, he did.

No cross-examination.

115 ALAN TURNER, a witness produced on behalf of the defendant, having first been duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Please let us have your full name and place of residence?

A. Alan Turner, Greensboro, North Carolina.

2. Q. In what business are you engaged at the present time?

A. Real Estate business.

3. Q. How long have you been engaged in the
116 Real Estate business?

A. Twenty years this year in this town.

4. Q. And being engaged in real estate in the City of Greensboro, you have likewise been engaged in real estate activities in the surrounding community?

A. I would say in a radius of fifteen or twenty miles.

5. Q. Are you acquainted with the property known as the T. L. Causby property located east of Greensboro-High Point airport?

A. I am.

6. Q. Have you had occasion in the last two years to have gone on and viewed the property?

A. Yes, I have.

7. Q. Are you acquainted with other property in the surrounding territory to the Greensboro-High Point airport?

A. Yes, sir, I am.

8. Q. About what date did you view the property known

as the Causby property with the purpose of placing an appraisment and valuation thereon?

A. I couldn't tell you the exact date. Some sixty or ninety days ago.

9. Q. At that time you made a check-up of the real estate as such, and the buildings placed thereon?

A. We looked over the property.

10. Q. Approximately what valuation would you place on the real estate itself, the lots themselves, separate from the buildings?

117 A. I would say $1800 to $2000. That is the buildings. I beg your pardon. The real estate, somewhere from $500 to $750.

11. Q. How about the buildings and improvements on the property?

A. I would say from $1800 to $2000.

The COMMISSIONER. 12. Q. When you speak of real estate, do you mean the land?

The WITNESS. A. Yes, sir.

By Miss FAGAN:

13. Q. What was your total valuation upon the property as it now stands, including the land itself, the improvements, the fencing, the water, everything that is on the property as it now stands?

A. From $2500 to $2750.

The COMMISSIONER. 14. Q. Does that include the residence house, too?

The WITNESS. A. Yes, everything.

By Miss FAGAN:

15. Q. In regard to the buildings about what age would you say those buildings were?

A. The house looked like it is older than the outbuildings. I don't know how old those buildings are. The house I would judge from appearances to be about fifteen years old.

16. Q. How about the state of repair?

118 A. The house was in only a fair state of repair.

The other buildings were in better condition.

17. Q. You are placing that valuation on it as though the property were taken over in fee under a complete taking?

A. Yes, ma'am.

CROSS-EXAMINED FOR PLAINTIFF

18. Q. I will ask you if you do not know that lots by the side of this sold for $300 and $350 an acre six months ago, and some sold as high as $500 at least two years ago?

A. I don't know that.

19. Q. You have never sold any out there?

A. Yes, about six weeks ago.

20. Q. Most of the property you sold has been in better sections of Greensboro, where property is considerably higher?

A. Most of our business has been in the western and northern part of Greensboro.

21. Q. But you don't cater to acreage and small tracts and houses of that description, do you, in your business?

A. We cater to any places we can make a dollar.

22. Q. I will ask you if your main real estate activity has not been lots and houses in the City of Greensboro mainly, and developing certain sections in Greensboro?

A. I would say that is the main part of our business.

23. Q. You and Mr. Moore developed Sunset Hills?

A. Yes, sir.

119 24. Q. And you sold a great many lots in Star mount Forest?

A. Yes, sir.

25. Q. As a matter of fact, you sold mine that I built on?

A. Yes.

26. Q. You say that real estate would only be worth from $500 to $750?

A. Yes.

27. Q. Do you know of any land around there approximately 2.9 acres that has sold for a price like that?

A. I sold a place this side of that recently, about six weeks ago, with about five acres in it.

28. Q. That is since the hazard became so great out there?

A. I will say about six weeks ago.

29. Q. Now, Mr. Turner, I will ask you if you are not placing your valuation on the property in its present condition, and with the planes flying just above the tree-tops and the house?

A. I am placing that valuation on it at the time I saw it about sixty days ago, possibly ninety.

30. Q. In other words, the property is not as desirable now with those planes flying over the top of it?

A. I don't think it is.

31. Q. That is one reason you put it lower?

A. I took that into consideration when I put the value on it, yes.

32. Q. Let me ask you this. Don't you recall that
120 about three years ago some land was sold right by this, lots, for $300 an acre?

A. No, sir, I have no knowledge of it.

33. Q. You won't deny that it was?

A. I have no knowledge of it at all.

34. Q. The fact that the present conditions out there that you say you took into consideration makes the place less desirable for any home, doesn't it?

A. Yes.

35. Q. Doesn't it make it less desirable for chicken business, or any kind of business?

A. I don't know a thing about the chicken business.

36. Q. You don't know anything about raising chickens?

A. I tried it once and quit it.

37. Q. Do you know that the noise from planes disturbs the chickens?

A. No, sir, I don't know a think about that.

38. Q. But you know it disturbs people?

A. Yes, I would think so.

39. Q. You would not want to live in that house?

A. No, sir, I wouldn't want to live in it, before or after.

40. Q. You wouldn't want to live in it under those conditions, even if it was as good a house as yours?

A. No, I wouldn't.

41. Q. I will ask you if you don't consider it virtually uninhabitable?

121 A. No, sir.

42. Q. You say you wouldn't want to live under those planes?

A. I will say that is entirely right, but I will say it has some value, and will sell today.

43. Q. In view of the fact that you say you would not want to live in the house even though a good house, then you consider it uninhabitable, don't you?

A. No, sir.

44. Q. Then why wouldn't you want to live in the house under the planes?

A. It is a matter of personal preference.

45. Q. You would not have any satisfaction living there with planes clipping the tops of trees?

A. I answered your question. I said I would not want to live there.

46. Q. Do you happen to know there is water piped to every one of those chicken houses?

A. No, I didn't know that.

47. Q. You didn't take that into consideration in your appraisal?

A. I didn't know that.

48. Q. Do you know or do you recall that there is a five room residence, with a sleeping porch made into a room, making six rooms?

A. Yes, sir.

122 49. Q. Do you recall it has a full bath?

A. It has a tub and commode.

50. Q. That makes a full bath, doesn't it?

A. No, sir. A lavatory is not there.

51. Q. It has a bath?

A. It has the tub and commode.

52. Q. You say you thought the house was fifteen years old?

A. It looks like it.

53. Q. I will ask you if you don't know it is seven years old?

A. I don't know that.

54. Q. Then you are not very familiar with that property?

A. I told you I had no knowledge of when the house was built, but from appearance I would judge it to be about fifteen years old.

55. Q. Did you see there a shed roof chicken house, two-story, 20 by 20, painted?

A. There are several buildings there.

56. Q. Did you see a 32 by 20 combination chicken house, frame construction?

A. I saw several buildings. I can't answer that particular question.

57. Q. Did you see a 20 by 20 shed roof chicken house?

A. I can't answer that.

58. Q. Did you see a 12 by 14 brooder house?

A. I think that is first on the left as you go back on the property.

123 59. Q. Did you see one 14 by 8 an another 10 by 10?

A. I saw them.

60. Q. Did you see the wire fence enclosing the half acre hog lot?

A. Yes, sir.

61. Q. You say you did not consider the fact that the water system was complete and piped to all these chicken houses?

A. It would not affect your valuation much.

62. Q. Would it affect the cost of putting it there?

A. Of course, it would cost something to do that.

63. Q. I will ask you if you don't know that it is a fact that it was piped to all these and that there is a well and pressure water system—if you don't know in your experience in building that it would cost about $1000?

A. No, sir, it would not, in my opinion.

64. Q. I ask you if a drill well with a pressure system

piped into the house and bath complete, as you say all but the lavatory, piped to all the chicken houses with an automatic system in the chicken houses, if that would not cost approximately $1000?

A. May I ask if that is a deep well or shallow well?

65. Q. My impression is about 80 feet. What is considered a deep well?

A. I have always said a deep well goes down to rock.

66. Q. Assuming that it does go to the rock and is a deep well?

124 A. I have one on my place. The well cost me $200 and the pump cost $150.

67. Q. That would be $350. What about the piping and automatic system in the chicken houses?

A. Tell me what an automatic system is.

68. Q. You didn't see it?

A. No, sir.

69. Q. Didn't you go to inspect this property with a view to appraising it?

A. I went to all the houses. I didn't see any automatic water system.

70. Q. You didn't even go in the residence?

A. No, sir.

71. Q. Yet you come here and state the value of the house?

A. I think I can.

72. Q. You didn't go in the house?

A. No, sir.

73. Q. How close to the house did you get?

A. I didn't have a key and couldn't get inside. We looked in the windows.

74. Q. Why didn't you go back when someone was there?

A. I was not asked to.

75. Q. Who asked you to go there?

A. I was asked to go there by a representative of the Government.

76. Q. So you didn't know the details of all these chicken houses when you placed your appraisal on

it?

125 A. No.

77. Q. And you didn't know how the house looked inside?

A. Except what I could see through the windows.

78. Q. You didn't go inside the house and you say when you placed your value that you took into consideration the fact of the hazard and noise, and all that existed today in appraising it?

A. Yes.

79. Q. Did you see a kind of combination barn and garage there?

A. I saw a lot of buildings, five or six outside of the house.

80. Q. The buildings that I have enumerated, those outbuildings aside from the residence itself, including a two-story 20 by 20 chicken house, a 32 by 20 combination chicken house, a 20 by 20 shed roof chicken house, one 12 by 14 brooder house, one 10 by 10 feed house, two 10 by 10 rain shelters, two hog houses, one 14 by 18 and the other 10 by 10, and a wire fence—I will ask you, based on your experience in building and cost of material, if it would not cost at least $1000 to replace the outbuildings?

A. I don't know what present day construction is. We have not built any in about two years.

81. Q. You have done some repairs?

A. Very little.

82. Q. You know what lumber costs?

A. No, sir. The last figure I had was $65 a thousand.

126 83. Q. It is a good deal higher?

A. Yes, a good deal [illegible].

84. Q. Building cost is h[illegible] labor considerably higher?

A. Yes.

85. Q. Then I ask you if it would not cost, in your opinion, something like $1000 to replace the outbuildings I described?

A. I do not think so.

86. Q. How much do you think?

A. I would say from $500 to $750.

87. Q. I will ask you about the house you did not really see inside. If that is a six room house, including the closed-in porch, which is used as a room, I will ask you if on the present market timber and labor, if it would not cost at least $2500 to replace the house?

A. I would not think that, no, sir.

88. Q. How much would you say?

A. I would say around $1,750, but it is depreciated, it is not new.

89. Q. I mean to replace it.

A. $1,750. It might cost up to $2,000 if it were new.

90. Q. Have you built any houses of that size and construction?

Miss FAGAN. I object to this line of cross examination. It has been fully covered, I think. I object as incompetent, irrelevant and immaterial.

The COMMISSIONER. I think it has been fully covered, but this is on cross examination.

127 Mr. COMER. I propose to show that Mr. Turner builds better houses.

By Mr. COMER:

91. Q. Most of the houses you build have been larger houses, of better construction?

A. Yes.

92. Q. But not everyone can live on Park Avenue, can they?

A. Nor East Avondale or West Avondale.

93. Q. This house is serviceable?

A. Yes, it is livable.

94. Q. Even from what you saw from the outside, the rooms look nice?

A. It is a very cheaply constructed house, if that is what you are getting at.

95. Q. It is livable or would be, but for the hazard?

A. It is livable after a fashion. It is a cheaply con-

structed house. It has no central heating plant and all those things you are accustomed to.

96. Q. You can't build anything but a cheap house for $2500?

A. That is right.

97. Q. You know that these big planes come over and did while you were there?

97. Q. Some coming in while I was in the yard.

98. Q. Some came pretty close?

A. They looked like they might be fifty or sixty feet overhead.

99. Q. Over the house?

128 A. Yes, they were pretty low. That is pretty low when they get that low.

100. Q. Do you remember whether they were taking off or coming in?

A. Coming in.

101. Q. That property is right in line with the angle of the glide?

A. I don't know. They were coming over the house. I don't know much about aviation.

102. Q. But they looked like army or navy planes, or what?

A. I don't know.

103. Q. You don't know the planes?

A. No, sir.

104. Q. The land itself would have considerably more value than you placed upon it if it were not for that condition existing?

A. No, I don't think the property would be worth more than that anyway.

105. Q. Aren't you valuing it kind of for farming purposes?

A. No, you don't value land at $200 an acre for farming purposes.

106. Q. Don't you know there is a lot of land sold higher than that for farming purposes in this county?

A. A man cannot afford to pay that for it and farm on it.

107. Q. Can you buy any land near Guilford College for less than $200 an acre?

129 A. Yes, I can get you some for that.

108. Q. Don't you know farm land has sold for more than $200 an acre in this county?

A. No, I know some for $300.

109. Q. Then you are wrong?

A. No, if a man wants a farm he is not going to buy two acres.

110. Q. This would be suitable for chicken business with this acreage.

A. I think it would. Individually, I don't know the chicken business. I told you that awhile ago.

REDIRECT EXAMINATION FOR DEFENDANT

111. Q. Have land values in that neighborhood or in this neighborhood increased in the last two years?

A. Well, I would say this, that of course that airport has been there for a long time. From a residential standpoint, I don't think anybody would want to buy property against the airport at any time before or since the army maneuvers out there, but while perhaps that has hurt the value of the land there, on the other hand there has been an increase in market value everywhere which would perhaps offset that depreciation on account of the airport.

112. Q. Do you know from your activities in real estate dealings how long that airport has been out there?

A. I judge that airport has been there some twelve years, something like that. That is just a guess.

130 113. Q. Have real estate values around the airport always been a little lower than real estate values in other outlying regions around Greensboro?

A. No, I would not say that.

114. Q. Has it changed any recently?

A. I think perhaps that extra activities would make it less desirable from a residential standpoint.

115. Q. Did I understand you to say that the socalled extra activity around the airport, if it lowered the value, was offset by rising market values in that same area?

A. It would be I would say by the general rise in all real estate values.

RE-CROSS-EXAMINATION FOR PLAINTIFF

116. Q. Prior to two years ago when the activity became so great as to create conditions described there now, I will ask you if at that time if the airport being there had not had a tendency to increase the value a little of property around there for business dealings?

A. Close in to the airport it would be very small that it would be helped.

117. Q. Prior to two years ago, the small number of planes, one or two more planes a day did not interfere much with property as far away as Causbys?

A. I am not particularly familiar with the activities at the airport, I could not answer that.

118. Q. You know it is considerably greater now than it was before the war?

131 A. There is more. I live on the north and south route myself, and I see them coming over.

119. Q. In other words, there were no army or navy bombers entering there prior to the war?

A. No, sir.

REDIRECT EXAMINATION FOR DEFENDANTS

120. Q. You say that the army and navy bombers come over your place where you live?

A. Yes, sir.

121. Q. Because they fly over your place, do you consider that the Government has taken your real estate?

Counsel for plaintiff objects.

The COMMISSIONER: I do not think it is material one way or the other. I will sustain the objection.

R. M. HOLT, a witness produced on behalf of the defendant, having first been duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Where do you live, Mr. Holt?

A. I live at 532 Sterling Street, Greensboro.

2. Q. How long have you lived in and around the City of Greensboro?

132 A. Since 1906, about 38 years.

3. Q. Are you a fee title owner of any real estate which adjoins the Causby property in question near the Greensboro-High Point airport?

A. Yes, sir.

4. Q. What lot number is that?

A. Number 31.

5. Q. It lies in what direction from the Causby property?

A. I would say south.

6. Q. Towards Greensboro or away from Greensboro?

A. It is nearer Greensboro than the airport.

7. Q. Is that lot the same lot size as the Causby lot?

A. It is supposed to be by the deed, it is supposed to be the same size.

Counsel for plaintiff objects.

A. (Continued) I have 100 feet front there and around 1200 feet depth.

By the COMMISSIONER:

7. Q. Are you familiar with the size of the Causby property?

A. Yes, sir. They are in the Lindley subdivision, and they are the same size.

8. Q. Your property and the Causby property about the same size?

A. Yes, sir.

133 By Miss FAGAN:

9. Q. Did you at any time own the Causby property?

A. I don't know, I would not say. They had a little line dispute out there some time or another, but I had a mortgage on Mr. Causby's property, at one time.

10. Q. You are familiar with the size of the two properties and the adjoining property lines?

A. Yes, ma'am.

11. Q. This property of yours is unimproved property?

A. Yes, sir.

12. Q. Some fencing on it?

A. It did have some. I have not seen it for over a year.

13. Q. It did have trees?

A. Yes.

14. Q. Did it have any other improvements?

A. No, ma'am.

15. Q. Have you had that real estate up for sale in the last two years—have you listed it for sale in the last two years?

A. Yes, ma'am.

Mr. COMER. I want to object to that line of reasoning. I assume she is attempting to show the value of the Causby property. A man who knows real estate, as I understand the rule, can base his judgment upon whatever he wants to, but I do not think it is competent for him to tell what some other property by the side of it sold for.

134

The COMMISSIONER. If he knows the value of the Causby property and has an opinion about it, I think it is competent for him to state it.

By Miss FAGAN:

16. Q. Do you feel, Mr. Holt, that in view of the fact that you have property which joins the Causby property, which is the same size, and in view of the fact that you at one time had an interest in the Causby property, do you feel that you are in any position to express an opinion as to the value of the Causby property—the real estate?

Mr. COMER. I do not believe she has attempted to show that he is in the real estate business, and it might go to the weight of it. It may be competent, and the question of what he knows might go to the weight of it.

The COMMISSIONER. I think so too.

A. (By the witness) I do not think I would be competent to appraise Mr. Causby's property as a man in the real estate business.

By Miss FAGAN:

17. Q. You would not feel that you would care to express an opinion as to the value of the real estate?

A. No.

No cross-examination.

135 R. L. FOGLEMAN, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Where do you live, Mr. Fogleman?

A. 306 North Mendenhall Street, Greensboro.

2. Q. How long have you been a resident of Greensboro?

A. About twenty years.

3. Q. What is your business occupation?

A. I am Associate Revenue Appraiser for the Farm Credit Administration assigned to the Federal Land Bank of Columbia.

4. Q. Have you been and are you familiar with real estate and real estate values in and around the City of Greensboro?

A. I think so.

5. Q. Have you dealt in real estate or appraised real estate in and around the City of Greensboro within the last ten years?

A. Yes, sir.

6. Q. How extensively has your appraisal of real estate been in the City of Greensboro in the last two years?

A. I have appraised several properties within five or ten miles of Greensboro. I appraised property adjoining the airport on the north.

7. Q. Are you familiar with the property known as the T. L. Causby property, which is in question in this litigation?

136 A. Yes.

8. Q. Have you had occasion to view and appraise the property?

A. I have.

9. Q. When was your appraisal of that property made?

A. I viewed the property about sixty days ago very carefully and then I also looked at it yesterday afternoon again.

10. Q. At the time you appraised the property sixty days ago, did you make a complete investigation of the property and buildings?

A. I did.

11. Q. Do you have any notes you had taken upon the appraisal at that time, so far as the size and construction of the buildings go?

A. Not the exact size of all the buildings, but approximately the size.

12. Q. In regard to the land itself, approximately how many acres lay in that tract?

A. 2.8. I think is correct. It is 100 foot front and it sets back 1200 feet on one side and 1100 something on the other.

13. Q. In making your appraisal, did you place a separate appraisal on the land itself?

A. Yes, I did.

14. Q. What valuation have you placed upon the land itself in making that appraisal?

A. $500.

137 15. Q. In regard to the buildings would you describe the dwelling?

A. The dwelling is of frame construction, it has six rooms, sills I think are 2 by 8 and the floor joists are 2 by 6 and about 24 inches apart. It is weatherboard, ceiled, part of the ceiling is B ceiling, it is pine floors, it has a bathtub and commode in one room of the house, that is the northeast corner of the house, and has a sink in the kitchen. It does not have a chimney, it has flues, not a regular open fireplace, it has flues.

16. Q. In what state of repair did you find the dwelling?

A. The dwelling is of rather cheap construction. It is a livable house, but it is not an expensive building.

17. Q. What valuation did you place upon the dwelling at the time you made your appraisal?

A. $1350.00.

18. Q. Were you taking into consideration the cost of it less depreciation?

A. Yes, ma'am.

19. Q. In computing it in that manner, what depreciation had you placed upon the dwelling?

A. I estimated the dwelling would be constructed for approximately $1800 complete and around 20% on that type of construction. I estimated the building has been constructed about six or seven years. That is my opinion. I don't know definitely.

138 20. Q. Then you placed your depreciation and arrived at a present value on the dwelling of approximately $1300?

A. $1350, because of the depreciation.

21. Q. In regard to the other buildings, Mr. Fogleman, the large chicken house, did you make an appraisal of that?

A. Yes, ma'am. That is a one and one-half story building, 20 by 20. It is of frame construction and weatherboarded, painted, has a metal roof, the front of the building is open. I estimate that building could be constructed for approximately $250.

22. Q. In placing your valuation on it, did you take into consideration any depreciation on it?

A. There has been very little depreciation on that building. That is the best one there. I estimated it worth $225 at present.

23. Q. There is another poultry house on the place?

A. Yes, there is a brooder house. I think it is 14 by 16. It is of frame construction, it is weatherboarded, not painted, covered with composition old roofing.

24. Q. About what age would you say that building was?

A. That is probably four or five years old—five or six.

25. Q. What valuation did you place upon that building in making your appraisal?

A. $100.

26. Q. That was taking into consideration the depreciation on it?

139 A. Yes.

26. Q. How about the other buildings? is there a barn on the property?

A. Yes, ma'am, there is, a laying house, I believe. That is 20 by 30, of frame construction, it is planked up and down with rough boards and also covered with old roofing. The front is open.

27. Q. What state of repair is that building?

A. Just fair. That is an older building than the other buildings, I would say. It probably cost $250 to have built that originally. I assume it is probably worth $175.

28. Q. Is there a feed house on the premises?

A. Yes, ma'am.

29. Q. Is that all the chicken houses you have listed?

A. There are some other small houses. There is a feed house 10 by 10 of frame construction. It is planked up and down and covered with old roofing, composition. I placed its value about $35 to $40. There is a barn 20 by 20, frame construction, also composition, old, open front. That building is in rather poor condition. I placed its value $40 to $50. There are two chicken houses, just small ones, no sides on those, probably one side, two on one. Probably $15 or $20 apiece.

30. Q. That is all the buildings?

A. No, there are three small pig houses on the

140 back part, and garage. That is about probably 8 by 16. That has plank siding and composition roof. It is an older building than some of the others. Present condition, probably $40 or $50.

31. Q. In appraising the property did you take into consideration the timber on the property?

A. There is not any commercial timber. There is some pine timber in the back and you could consider that firewood. There are shadetrees. I valued that in the farm. If the timber was cut from the property it would sell for $50 but it would depreciate the value of the property, and I valued that in appraising the land.

32. Q. Did you take into consideration water improvements, the pump and well?

A. Yes, ma'am. There was a well there which I was informed was probably 80 feet deep, a bored well, and an electric pump in the well, I valued at $125.

33. Q. To the best of your opinion and basing that opinion upon an examination of the propefty and with full regard to real estate values in that community, what appraisal did you place upon the entire property as it stood when you made your appraisal sixty days ago?

A. $2850.

34. Q. And that, you believe, was the fair market value of the property if title was transferred in fee?

A. Yes, ma'am.

141 35. Q. Are you acquainted with the conditions in and around the Greensboro-High Point airport property?

A. Yes, ma'am.

36. Q. Having been a resident of Greensboro for the length of time you stated you were, could you state as to how long the airport where it now lays has been in operation?

A. I think the airport was first constructed there about 1926, and in 1933 it was enlarged some and rebuilt, and put a new hangar there. I am not positive about the date, but about 1933, and again in 1935 or 1936 they put on a program to enlarge it, and I think that work was completed about 1940.

CROSS-EXAMINED FOR PLAINTIFF

36. Q. Then you know that the runways were extended again when the army took it over?

A. No, sir, they were not.

37. Q. There did not any army and navy planes come over in 1939 or 1940 or 1941?

A. Yes, I have seen army and navy planes there.

38. Q. When did you see the first army plane you saw come over there?

A. I was there in 1937 or 1938 when they first completed rebuilding, and there were some army planes came in.

39. Q. They came in to see if they could land?

A. They were coming through.

142 40. Q. There was no regular line until after the war?

A. No, sir.

41. Q. And prior to the war and prior to the time the army and navy began to use it extensively, what few little planes they had, and the Government mail plane would not disturb property much, as far away as Causbys?

A. I think the Eastern Air Line began using the field

42. Q. (Interposing.) Answer the question and then explain. It would not disturb the property?

A. Will you please repeat that question?

43. Q. I asked if it was not a fact that a number of small planes and occasional mail plane or passenger plane that used that field prior to the time that the War Department began to use it for navy and army planes rather extensively—I ask if that use of it prior to that time would affect anybody to any great extent, as far as the Causby property from the airport?

A. I do not think it would to any great extent.

44. Q. Now you may explain, I did not mean to interfere.

A. The Eastern Air Line began using the field about 1930, and private planes used it. There has always been quite a lot of activity there since 1933 or 1934.

45. Q. At one time they condemned it?

A. No, sir, as far as I know it never was. I do remember that about 1932 or 1933——

143 46. Q. (Interposing.) They stopped bringing mail there?

A. No, the Eastern Air Lines would not let the large planes land there until they made certain improvements to the runways, but it was never closed to the service.

47. Q. You say it was never closed to the mail service?

A. I don't know about that, but I know the Eastern Air Line would not let their planes land there.

48. Q. Did you see any of the big army bombers come over there?

A. Yes.

49. Q. They went pretty close to the treetops?

A. They were not very close, I would say about 50 to 75 feet above the trees, possibly more than that.

50. Q. That is the one you saw the day you were there?

A. Yes.

51. Q. Were they big four engine bombers?

A. No, sir, they were not.

52. Q. You know the big bombers would have to come closer?

A. I don't know.

53. Q. Don't you know it takes a longer range for four engine bombers to rise than a cub plane?

A. Yes. I didn't see any four engine bomber.

54. Q. You say you are appraiser for the Farm Credit Association?

A. Yes.

144 55. Q. Under that comes the Federal Land Bank?

A. Yes.

56. Q. Really your appraisal is for the Federal Land Bank?

A. I have appraised property for the Federal Land Bank for four or five years, and also for the Internal Revenue, and for personal and private appraisal since that time.

57. Q. It is under the Farm Credit Administration, the Federal Land Bank of Columbia, that makes loans in this district?

A. Yes.

58. Q. And you work in cooperation with Mr. Searboro, who is the Secretary of the Federal Land Bank here in Greensboro?

A. Yes, he is a representative.

59. Q. He is called Secretary?

A. Yes, sir.

60. Q. You know that the Federal Land Bank does not lend any money on city property?

A. We include city property.

61. Q. They do not lend unless there is a farm?

A. Some acreage.

62. Q. And you were naturally looking at this land from a farm standpoint?

A. Yes, sir.

63. Q. Have you ever dealt in real estate?

A. Yes, I was engaged in real estate business and loan business in Greensboro exclusively from 1916 to
145 1931 except one and one-half years when I was in the armed service.

64. Q. What kind of property?

A. All taxable property, farm land, city property, business property.

65. Q. When you appraised this sixty days ago, you realized the conditions existing there?

A. Yes.

66. Q. And you took that into consideration?

A. I placed what I thought was the fair market value of the property.

67. Q. Under existing conditions?

A. Yes.

68. Q. You say now that the property would be worth more but for conditions out there?

A. I doubt seriously if it would sell for very little more if it was away from the airport.

69. Q. You do think it would sell for some more without that hazard?

A. I seriously doubt if it would.

70. Q. Why did you take it into consideration?

A. In making appraisal of property you take into consideration all factors in the community in placing values.

71. Q. You would not want to live in that house?

A. No, sir, I would not.

72. Q. Don't you think that as a residence, that that home is undesirable under the conditions?

146 A. It would be as far as I am concerned personally, in fact I would not have bought the lot in

the beginning with the buildings on it.

73. Q. Under the conditions that now exist, it would be undesirable under any condition?

A. No, other people live closer to the airport.

74. Q. Do you know any who live within the range of glide?

A. Yes, the house is about 500 feet from the runway, probably 500 or 600.

75. Q. Mr. Coble is 125 feet away?

A. Yes.

76. Q. He has lights on his barn?

A. Yes.

77. Q. To keep them from running into it?

A. Yes, that is customary around any airport.

78. Q. It is customary where the planes run close to it?

A. It is customary on any object extending in the air around any airport.

79. Q. The land you spoke of that you say is worth about $500?

A. Yes.

80. Q. Then 2.8 acres would be about $180 an acre, or have you figured it?

A. Approximately that.

81. Q. Don't you know that two years ago before
147 this hazard became so great, that land sold there for $300 and $350 an acre?

A. No, I don't know that.

82. Q. Don't you know that Ed Warren sold some for $350 an acre?

A. No, sir, I did not.

83. Q. You have never sold around there?

A. Not right around the airport. Yes, I beg your pardon, I sold some property adjoining the northwest corner of the airport.

84. Q. It was not a farm?

A. I sold three tracts there in 1928. I sold one tract for $50 an acre, with a small house, five acres.

85. Q. I asked you if you sold any about two years ago?

A. No, sir.

86. Q. You have not sold any small tracts around the airport in the last four or five years?

A. No, sir. I made thorough investigation of the market value——

87. Q. (Interposing.) Just stick to my question. You have no interest in this?

A. Not a bit in the world.

88. Q. The fact that you work for the Farm Credit Administration does not cause you to have any interest in this lawsuit? A. No, sir, I was requested to do it.

148 89. Q. You want to be fair about it?

A. Yes, I do, but I want to protect myself.

90. Q. These outbuildings, the value you placed totals about $800 or $900, or did you total them?

A. About $650.

91. Q. I will ask you to do a little adding then. You placed the chicken houses at $250, unless I wrote it down wrong.

A. Right.

92. Q. And the next chicken house at $100, and you placed the 20 by 30 laying house, I believe you called it, at $175 and said it probably cost $250?

A. Yes, that is right.

93. Q. How much would that make?

A. $100 for the brooder house, $225 for the one and one-half story house.

94. Q. You said $250.

A. I said it cost that probably new and today would be worth $225.

95. Q. How much does that make?

A. About $650.

96. Q. Then you have one at $40 which would make $700, another at $40, $740, two rain houses $15 each or $20 each?

A. I said $30 for the two.

97. Q. Then you placed the garage at $60, and you

placed some other houses, I forget what you called
149 them, at $30, and you did not mention the fence.

A. The fence in its present condition is worth about $30.

98. Q. If you add that, instead of running about $600 it would run between $800 and $900?

A. Let me see.

99. Q. Add the forty dollars and the fifty dollars and the fence.

A. Suppose the lady reads back and see what I placed on them, and we will add them.

The COMMISSIONER. I do not believe that would be any good.

A. (By the witness.) Approximately $650 is what I placed on them. I did not look at my notes as I called them off, but I will be glad to give them to you exactly.

Mr. COMER. Your Honor, it would tend to show a difference in its entire value.

The COMMISSIONER. We will get them exactly, so there will not be any doubt about it.

The WITNESS. $665 if I am not mistaken in my figures. I will be glad to call them back to you.

Mr. COMER.

100. Q. Go ahead and itemize them.

A. Brooder house, $100. The laying house, one and one-half story, at $225. The feed house at $40. The two rain houses at $30. Three small pig houses at $15. The fence, $30. Garage, $50. That is $665 if I am not mistaken.

150 101. Q. You named the chicken house at $225 first?

A. That is right.

102. Q. You named another at $100?

A. That is right.

103. Q. That would make $325?

A. That is right.

104. Q. Then you named another at $175?

A. That is right.

105. Q. That would make $500?

A. That is right.

106. Q. Then you named some kind of building at $40?

A. The feed house.

107. Q. That makes $540, and you named a barn at $40, which would make $580. Did you leave the barn out when you calculated?

A. I beg your pardon, I did. That was valued at $40. It would be $705.

108. Q. Let's see if you didn't leave something else out inadvertently. The rain houses were $30?

A. That is right.

109. Q. The garage was $50?

A. Correct.

110. Q. And then the other houses you have mentioned—I don't know what you called them—were $30, rain shelters or something?

A. Rain houses.

151 111. Q. You placed those at $30?

A. That is right.

112. Q. You overlooked the hog houses?

A. No, $15, three small houses.

113. Q. Then how much did you say the fence was worth—$30?

A. That is correct.

114. Q. You had left that out too, hadn't you?

A. No, sir. That is correct, $705, all included.

115. Q. The $705 did not include the fence?

A. Yes, sir.

116. Q. And the hog houses?

A. Yes, it included everything.

117. Q. And if you want to replace them, you couldn't do it for $1000?

A. Not with new material.

118. Q. The way materials and labor now is, you couldn't replace it for $1000?

A. If you built every thing brand new out of new material, I would say around $1000.

119. Q. Those buildings are serviceable?

A. Yes, sir.

120. Q. The first one you named was in excellent condition?

A. Not excellent, good condition.

121. Q. They are all fairly new except the barn?

A. No, several are old.

152 122. Q. The barn is the oldest, apparently?

A. Yes, the barns and garage are rather old.

123. Q. Did I understand you to say that you just valued that well in your figures at $125?

A. Yes, sir.

124. Q. Let me ask you this. The well that you saw and system and the connections for piping the water to all those chicken-houses, and the bathroom fixtures themselves—I will ask you if $1000 would not be a fair price for them?

A. No, sir, that would be entirely too much, I think.

125. Q. You think you could replace it for less?

A. Brand new material right now you might not. I can't say about that.

126. Q. Those pipes in the ground are just as serviceable as new?

A. For a certain length of time.

127. Q. The well is just as serviceable as a new well?

A. Yes, sir.

REDIRECT EXAMINATION FOR DEFENDANTS

128. Q. Mr. Fogleman, in the last two years, since the army has gone into the airport, have you been in and around the airport for a considerable amount of time?

A. Yes, ma'am.

129. Q. Approximately how often?

153 A. Every thirty days.

130. Q. For what purpose?

A. I assisted in making reports for the purpose of acquiring certain properties in and around the airport, and right for the army to use the field.

131. Q. As such, were you familiar with the runways located on the airport?

A. Yes.

132. Q. Can you state of your own personal knowledge whether or not you know that those runways are the same length today as they were prior to the time the army started using the airport, approximately two years ago?

A. That is the paved part of the runway?

133. Q. Yes, that is right.

A. That is right.

134. Q. They have not been extended?

A. No, ma'am.

RE-CROSS-EXAMINATION FOR PLAINTIFF

135. Q. The runway with respect to where the planes glide to get their altitude has been cleared up?

A. Yes.

136. Q. And this Eastern one has been cleared off?

A. That is right.

137. Q. You mean the paved portion has not been extended?

A. That is right.

154 138. Q. You say that you assisted in making some reports and investigating with reference to acquiring certain properties. Were you present when the engineers talked to Mr. Causby about this property?

A. No, sir.

139. Q. Do you know from your reports or otherwise that the engineers advised him they would have to take his property over?

A. Not that I know of.

140. Q. Did you understand that they did?

A. No, sir.

141. Q. Did they consider taking it over.

A. So far as I know it was never considered and so far as I know I assisted in making the only two reports which were made, in which it was considered acquiring additional land.

142. Q. Was this part of the additional land?

A. No, sir.

143. Q. Did they consider cutting the trees so they could get closer to the house?

A. I understand they did. I did not assist in the work of clearing certain obstacles from certain glide angles of the airport.

144. Q. But they did clear all the runways?

A. No, just two.

145. Q. Which were they?

A. Each end of this runway (indicating on map).

155 Lt. LEWIS K. DUNAGIN, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Are you now stationed in Greensboro, Lt. Dunagin?

A. Yes, at BTC #10.

2. Q. How long have you been there?

A. Since November 1942.

3. Q. In what capacity are you stationed there?

A. Assistant Post Engineer.

4. Q. State your educational qualifications.

A. Graduate of Georgia School of Technology, Atlanta, Georgia, 1930, in civil engineering.

5. Q. State your engineering experience since that time.

A. Two years with the Georgia Power Company, transmission line location, with the group of engineers as a civilian in the Memphis District. That included river maintenance and levee construction from Cairo to New Orleans.

6. Q. Since the time you have been stationed at BTC #10 in Greensboro and during that time, have you been familiar with what is known as the Greensboro-High Point airport which is close to the property of T. L. Causby in litigation here?

A. That is a satellite station of the post station at Greensboro, that is BTC #10, our dealings with that, not having had all the jurisdiction over that out there, but I have been connected with it.

156 7. Q. And you have been on the airport during the

construction period?

construction period?

A. At various times.

8. Q. You are acquainted with the location of the airport, the runways on the airport, and the construction work which has been done in order to clear approaches within the last year?

A. Yes; I was not actually on that work myself, but I would be there at various times contacting and seeing what was being done.

9. Q. I hand you a paper which the reporter has marked as Government's Exhibit No. 1, for identification. I ask you to state to the Court what that is, if you know.

A. The title of it is "Greensboro-High Point Airport near Greensboro, N. C. Property map for clearing, flying hazards". That was made up by a group of engineers. It was made up about a year ago, that was April 28, 1943.

10. Q. Have you made any recent measurements on the Causby property as it relates to the airport, within the last few days?

A. Yes, I have.

11. Q. When did you make those?

A. Yesterday.

12. Q. And what did you measure?

A. I found the distance from his house and his barn, from the end of the runway, the records show that from the end of the runway to his residence is 2500 feet,
157 approximately 2500 feet. Our measurement was 2530, and to his barn—I guess it is a barn, it is about 2460 feet. The purpose of the survey was to determine how high above his house or his barn the glide angle, where they exist, how far above his house, and from the computation, I found out——

Mr. COMER. 13. Q. Did you make the computation?

The WITNESS: Yes, sir.

By Miss FAGAN:

14. Q. In making those surveys and those measurements, how high did you find his barn to be?

A. The glide angle above the top of his barn is 57 feet.

15. Q. What was the glide angle above the top of the house?

A. Ten feet higher, which is 67 feet.

16. Q. Do you care to explain just what you mean by the glide angle?

A. That is given to me, to have something to work from. That has been determined by the Air Corps Authorities. Capt. McCoy knows more about who determines that, but a glide angle is a ratio, going 40 feet they rise one foot, so going 40 feet horizontally, you would rise one foot, that is one foot vertically to 40 horizontally, and that distance of his house from the runway, the glide angle is 57 feet above his tallest building, which is his barn. His barn is not
158 directly in line with the runway, it is approximately 100 feet to one side, but his house is directly in line with the runway, and the ground where his house is, is five feet lower than the elevation at the end of the runway. That is the data I received from the survey yesterday.

17. Q. Having made that survey yesterday and having procured those measurements, have you then made the paper plat which is attached to the map, to which you have just referred, and made a part thereof?

A. It is pasted on to the original map. The only reason I made this was to show the elevations. This extra addition put on there, this map is a layout, and in layouts there is no elevation shown. This I put on there does show elevation.

18. Q. The paper which you have attached to the map is a result of the survey you made yesterday, and these are your own figures?

A. That is right.

(Defendants offer in evidence the map which has just been identified by the witness for defendants, marked as "Government's Exhibit No. 1.")

19. Q. Do you understand what is meant by Windrose in aviation or on aviation maps?

A. I do not.

159 CROSS EXAMINED FOR PLAINTIFFS.

20. Q. If I understand you, you made all the figures and computations as shown by this sheet which is pasted on?

A. Yes, sir.

21. Q. But you did not make the other part?

A. No.

Mr. COMER. You are just offering the part that is pasted on?

Miss FAGAN. That is right.

The WITNESS. Pinned on to show the relation.

By Mr. COMER:

22. Q. The angle of glide, that is the rise per foot or per 100 feet, would depend upon the type of plane, would it not?

A. As I understand, the angle of glide has been determined. Everything below that is safe.

Mr. COMER. I did not ask the witness that. I ask that be stricken.

23. Q. I want to be practical about it. If a plane takes off from a runway, a small cub plane for example will climb faster than a bomber?

A. I can't answer that, I don't know. I imagine so.

24. Q. Have you ever seen them take off?

A. Yes, I have been in them.

160 25. Q. Don't you know they rise faster than a bomber?

A. I would think so, but I don't know.

26. Q. Don't you know they do?

A. I just don't know.

27. Q. You are not an aviator yourself?

A. No, sir.

28. Q. Did you actually measure the distance from the Causby property to the end of the runway?

A. I did not. I did by use of instruments.

29. Q. But you did not measure it?

A. No, sir, I computed it.

30. Q. Did you compute it by geometry or trigonometry?

A. By use of a transit. It would be geometry.

31. Q. Do you say the exact distance from the end of the runway to the Causby property is 2400 feet?

A. To the house. I say that is approximate.

32. Q. It could vary as much as two or three hundred feet?

A. No, sir, it could vary as much as 10 to 20 feet.

33. Q. Were you with the other engineers who measured it about a year ago?

A. No, sir, I was not.

34. Q. Were you ever present in a conversation with Mr. Causby and some engineers?

A. No, sir.

35. Q. Were you located in this territory in April a year ago?

A. Yes, sir.

161 36. Q. But I believe you say you have no direct connection with the airport here?

A. We have to maintain it now.

37. Q. Did you have anything to do in determining what was necessary to remove in order for these larger planes to operate on the field, clearing the field?

A. No, sir, that was handled in the district office.

38. Q. You had nothing to do with that?

A. Nothing to do with that.

The COMMISSIONER. 39. Q. Are you in what is called the Army Engineers?

The WITNESS. Yes, sir.

REDIRECT EXAMINATION FOR DEFENDANTS

40. Q. When you said you did not actually measure that yourself, you meant, however, that you did measure it with proper engineering instruments?

A. Yes. When I say measuring, I did not take a chain and get the vertical distance. I came out 90 degrees to the highway and measured opposite his house and turned 90 degrees back in there. It is computed. I had no opportunity to go on Mr. Causby's land, and I stayed off.

41. Q. And those actual measurements are recorded upon the map which was introduced?

A. Yes, and those measurements are approximately as I told you.

162 H. K. SWANSON, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Where is your residence?

A. Pilot Mountain, North Carolina.

2. Q. How long have you lived in and around the neighborhood of Pilot Mountain or Greensboro?

A. I was born and reared in Pilot Mountain and have been working for the Federal Land Bank in and around Greensboro for the past ten years.

3. Q. What has that work for the Federal Land Bank consisted of?

A. Appraisal of real estate.

4. Q. What type of real estate?

A. Farm land.

5. Q. Has that included any acreage ground?

A. It would include all acreage from a small tract to large tracts.

6. Q. Have you appraised any real estate within the last two years in the vicinty of Greensboro High Point airport?

A. I have appraised all of the real estate that the War Department acquired in and around the airport.

7. Q. Did you make an appraisal of the property, which is known as the T. L. Causby property close to the

163 Greensboro-High Point airport?

A. Yes, ma'am.

8. Q. When did you make that appraisal?

A. In June 1943.

9. Q. In making that appraisal did you make a complete check-up of the land and buildings, the improvements on that real estate?

A. I did.

10. Q. Do you have any notations or memorandum made at the time that appraisal was made, with you?

A. I do.

11. Q. Would you proceed in your own words to give us that appraisal?

Mr. COMER. I want to object to this part of it. I have no objection to his referring to any notes he made that refreshes his recollection, but the notes would not be competent.

The COMMISSIONER. He just wishes to refresh his recollection by the notes, as I understand.

A. (By the witness.) There are 2.8 acres of land, fronting 100 feet on highway No. 421 and extending back in a narrow strip about the same width all the way back approximately 1200 feet. Located on the land was a small dwelling, two poultry houses, brooder house, feed
164 house, a barn and small garage or storage, and small coops or chicken houses out in the lot, and some hog pens. The value of the place on the entire unit was $2885.

12. Q. Do you have any memorandum or notes to show the breakdown of that $2880?

A. I valued the dwelling at $1200. I valued the one laying house at $250, one was $150, and the barn had been a poultry house and the front of it was open and the value was $25. The feed house $25 and the garage or storage $25. Then the small weather buildings or coops there were five of those small ones, at $30, and 2.8 acres of land, including waterpipes, shade trees, I valued $780, and well and pump $275 and fencing $25.

13. Q. That made your total valuation what?

A. $2885.

14. Q. In placing that valuation upon it, did you take into consideration the property as you appraised it, considered from the standpoint of what you considered to be the fair market value of the real estate values in that community?

A. That was the fair market value as of that date.

CROSS-EXAMINED FOR PLAINTIFFS.

15. Q. Naturally, in appraising the value of a home, you would also take into consideration the hazard and conditions existing there by virtue of these heavy bombers going immediately over the house wouldn't you?

165 A. I valued the property of course, taking all factors into consideration.

16. Q. You took into consideration the conditions existing there, in other words, the home would be much more desirable for a home if it were further away or off from the runway, and you did not have the noise and lights from planes at night, and the hazard of planes coming close to the house; it would have more value but for that as a residence?

A. It would for me.

17. Q. You would not want to live there?

A. There would be a difference I would consider.

18. Q. You would not want to live there at all, would you?

A. I don't know that I would want to live there if there wasn't any airport there.

19. Q. That is begging the question a little; I meant because of this hazard that you would not want to live there.

Objection by defendants.

A. I would not be afraid of getting killed or anything like that as far as the hazard is concerned.

20. Q. You do know that three or four people were killed out there about five or six months ago?

Miss FAGAN. We object to that as being improper cross examination, immaterial, incompetent and irrelevant.

166 The COMMISSIONER. The objection is overruled. Mr. COMER.

21. Q. Due to hazards?

A. Yes.

22. Q. A family was virtually wiped out.

A. Three or four miles north of that.

23. Q. Do you know also that a plane landed between the end of the runway and the Causby's house about six months ago?

Miss FAGAN. I object as being improper cross examination.

A. I don't know about that.

24. Q. But you do know about the other?

A. I heard one crashed into a house about three miles north of the airport.

25. Q. You didn't hear it was three miles?

A. That is what I heard, I don't know anything.

26. Q. Have you ever been out there when planes were coming close to this house?

A. Yes, sir.

27. Q. You say they would not disturb you, day or night?

A. No, they would not disturb, any more than living close to a railroad. You get used to those things.

28. Q. I ask you if it would not disturb you if planes and bombers came in there and turned lights on at two o'clock, when you were asleep?

167 Miss FAGAN. We object, as being improper cross examination, and incompetent, irrelevant and immaterial.

The COMMISSIONER. I will let him answer. It is far away from the question.

Mr. COMER.

29. Q. Would it not bother you?

A. Not if I lived there all the time.

30. Q. In your work with the Farm Land Bank your appraisals have naturally been mostly farm land?

A. No, sir.

31. Q. Did you ever know the Federal Land Bank to lend money on simply a house and lot?

A. If there is sufficient space to have a small garden and cow.

32. Q. It is a fact that the Federal Land Bank lend money on farm and farm lands?

A. Possibly a fellow might live off the land and maybe

have one and a half or two acres of land, if he has space for his chickens and cows and a small garden, we make an investment loan.

33. Q. But there has to be some farm or farming operation?

A. It does, because the Home Owners Loan would make it otherwise.

THE COMMISSIONER. 34. Q. They do not make loans now?

168 THE WITNESS. No, but they would have.

By MR. COMER:

35. Q. Mr. Swanson, you placed some values on some of those houses as $25 apiece, about four of them, and I will ask you if you do not know you cannot even buy the lumber for that?

A. Those buildings were—

36. Q. (Interposing) Answer that question. Don't you know you couldn't even buy the lumber for the amount you put as appraisal on some of those buildings?

A. New buildings.

37. Q. Have you built any lately?

A. If you can find it. Everything is frozen now.

38. Q. They do sell lumber now?

A. Up to $500.

39. Q. And people build barns and make some repairs?

A. Yes, sir.

40. Q. You know what lumber costs?

A. Yes, sir.

41. Q. Anywhere from $65 to $100 a thousand.

A. It depends on the type of lumber.

42. Q. I mean building material. You testified that this dwelling was appraised at $1200 taking into consideration the conditions and all?

A. Yes,

43. Q. I ask you what in your opinion it would cost to replace that dwelling?

169 A. About $1500, the same type of construction.

44. Q. Did you go inside the building?

A. Yes, sir.

45. Q. Did you go at the same time Mr. Fogleman did?

A. I was there with him and then I went again a year ago.

46. Q. At the time you went in the building was that with Mr. Fogleman?

A. The last time.

47. Q. Do you know he has a complete water system there connected with all his chicken houses?

A. Yes, sir.

48. Q. Did you take that into consideration?

A. Yes, sir.

49. Q. Did you take into consideration the deep well?

A. Yes.

50. Q. Don't you know that in some of the land the Government did acquire out there, they paid $400?

Miss FAGAN. I object as being improper cross examination, incompetent, immaterial and irrelevant.

Objection overruled.

A. You mean similar land to this?

51. Q. I ask you if they did not acquire some land around this airport and that the Government paid around $400 for it?

A. They paid that, but it was not similar land.

170 52. Q. It was land around the airport?

A. Yes, sir.

53. Q. And they paid $400 an acre for it?

A. Yes, I appraised that for them too, and put that value on it.

54. Q. Where was it located?

A. On the highway.

55. Q. This is on the highway too, isn't it?

A. Yes, but this particular tract you are speaking of $400 had a long frontage on the highway. I have forgotten the number of feet, but I expect the frontage on the highway on that piece of land was as long as this would have been if it had been turned around.

56. Q. How many acres did they have?

A. 7.7.

57. Q. How deep did it go back?

A. I don't have the exact figures, but I imagine 300 or 400 feet.

58. Q. And you paid $400 an acre for it?

A. I think so.

59. Q. How long ago has that been?

A. Last June.

REDIRECT EXAMINATION FOR DEFENDANTS.

60. Q. This property Mr. Comer referred to—was that what was known as Lindley Nursery?

171 A. No, that was Motsinger.

61. Q. And was that property closer to the airport?

A. That was closer to the airport and much more desirable property.

62. Q. Did you say that you made the appraisal of this property that was purchased as well as the appraisal of the Causby property at the same time?

A. Yes, sir.

63. Q. And used the same method of appraisal on both of them?

A. Yes, that is right.

RE-CROSS-EXAMINATION FOR PLAINTIFFS.

64. Q. There is not but 200 feet between that and the Causby property, is there?

A. There is over 200 feet between what the Government bought.

65. Q. Very little, isn't it?

A. Mr. Motsinger owns a long strip of land between this and the Causby corner we did not acquire.

66. Q. Isn't it about 200 feet between the Causby property and what the Government did acquire?

A. You have it there on that map. I don't remember, but it is my opinion there are several hundred feet there.

67. Q. You think it is over 200?

A. I think it is several hundred, because the Motsinger came on out and corners, I think, not far from Mr. Causby's corner, the remaining part the Government did

not acquire.

172 REDIRECT EXAMINATION FOR DEFENDANTS.

68. Q. These are some maps provided by the War Department which you used in locating the particular properties to which your examination has been directed, this one being marked Exhibit 2. Can you locate on that the Causby farm which has been referred to in this litigation?

A. Lot No. 2004.

69. Q. What is the property that bears the number 202 and 201 within the heavy black line?

A. This was Lindley and this Motsinger (indicating on diagram).

70. Q. So Nos. 201 and 202 within the heavy black line on exhibit 2 is the property acquired?

A. Yes, sir.

71. Q. And the Causby property bears No. 2004?

A. Yes.

72. Q. The property that intervenes between code Nos. 201 and 202 within the heavy black lines which has been acquired by the Government, and the Causby property, Code No. 2004, has not been acquired by the Government?

A. That is right. Here is the corner of this, and that is 600 feet to the end (indicating on map, Exhibit 2.)

RE-CROSS-EXAMINATION FOR PLAINTIFFS.

73. Q. It is the same type of land?

A. The same type of soil.

173 Miss FAGAN. I have been talking with Mr. Comer regarding some maps we have here, in order to avoid bringing over the man who drew them, and he has agreed that they may be offered.

Defendant offers in evidence map drawn by the Construction Division of the War Department, Real Estate Division, of the Greensboro-High Point airport, showing the adjoining properties and owners thereof in the legend attached to the map. (Marked as: Defendant's Exhibit No. 2.)

The COMMISSIONER. Let it be filed.

Defendant offers in evidence map of the Greensboro-High Point Municipal Airport, showing the buildings, improvements and runways on the airport property. (Marked as: Defendant's Exhibit No. 3.)

Defendant offers in evidence a map of the Greensboro-High Point Airport, drawn in detail, showing the surrounding section, and include therein the drawing of the current field runways on the airport, the windrose for Greensboro, N. C. and the local flying area. (Marked as: Defendant's Exhibit No. 4.)

The COMMISSIONER. Let them be filed.

174 BYRD I. SATTERFIELD, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Where do you live, Mr. Satterfield?

A. My office is in Raleigh, North Carolina.

2. Q. By whom are you employed?

A. The Real Estate Branch of the War Department.

3. Q. How long have you been so employed?

A. Since August 5, 1941.

4. Q. Prior to that time what were your duties, what was your occupation?

A. I was a practicing attorney in Durham, North Carolina.

5. Q. Since 1941, since you entered the employ of the Real Estate Branch of the War Department, what have been your duties?

A. Assisting in the acquisition of military reservations, including the acquisition of land adjoining the airfields.

6. Q. Have those duties included the acquisition of land in connection with the improvements of the approaches to the runways at the Greensboro-High Point airport?

A. It has.

7. Q. What duties did you perform in connection with the acquisition of lands or the improvements of the approaches to the runways of the Greensboro-High Point

airport?

175 A. May I ask are you referring to that portion that was acquired in fee?

8. Q. That is right.

A. Under the directive of the War Department the Government acquired five tracts of land immediately joining what we term as the Greensboro-High Point airfield, that is the airfield that has been in existence for a number of years. The five tracts that the Government acquired in fee are the J. A. Inman and wife property, 57.92 acres; Stacy Mills and wife, 16.4 acres; Lindley Nursery, Inc. 5.15 acres; and Lindley Nursery, Inc. 30.33 acres; Motsinger Bros. 7.71; making a total of 102.75 acres.

9. Q. Mr. Satterfield, what portion of that land to which you have just referred which the Government acquired in fee is shown on Government's Exhibit No. 2 bearing the legend Nos. 201 and 202?

A. That is the Lindley Nurseries, Inc. and Motsinger properties.

10. Q. The portion of the Lindley Nurseries, Inc. you have referred to, include how many acres?

A. 30.33.

11. Q. And the Motsinger Bros. 7.71?

A. That is right.

12. Q. Those lands which you have referred to which were acquired in fee are shown on the map, Government's Exhibit No. 2, bearing the legend Nos. 201 and 202

176 enclosed by the heavy dark line—is that correct?

A. Yes, ma'am.

13. Q. On Government's Exhibit No. 2 can you locate the Causby property which is in litigation?

A. That is B-2004.

14. Q. In what position does that lay from the land which was acquired in fee by the Government to which you have referred from the Greensboro-High Point airport?

A. It is in a southeasterly direction.

15. Q. Is there other land intervening between that land which was acquired in fee, to which you have re-

ferred, and the Causby property which has not been purchased by the Government?

A. There is. Tracts 2002, Lindley Nurseries, Inc., and 2001, Motsinger Bros., and 2003, Orten A. Boren.

16. Q. And those are all shown by those legend numbers on Government's Exhibit No. 2?

A. They are.

17. Q. Have you ever had any directive from the Government to purchase or to take in fee any property lying southeast of that property which you acquired in fee, which would include the Causby property?

A. We have not.

18. Q. Then on all of these tracts, that is Nos. 2001, 2002, 2003 and 2004, the last named being the Causby property, on those properties you have received no
177 directive from the Government to take those properties in the enlargement of the airport?

A. We have not.

19. Q. Have you at any time interviewed the Causbys at their home in relation to any problems pertaining to the airport property?

A. Yes, on possibly three or four occasions I have seen them.

20. Q. What was the occasion for those interviews?

A. In the beginning of the development of the airport, about the same time the directive came for the acquisition of the five tracts that I just mentioned, also our office was requested to secure entry permits for adjoining property which included the Causby property, for the purpose of ascertaining flying hazards.

21. Q. Did you consult with the Causbys in regard to the procurement of that proposed right of entry?

A. Yes, I did.

22. Q. About what time did those interviews or conversations take place—can you place them as to time?

A. I can place the approximate dates.

23. Q. That is near enough.

A. The first time was in May 1943. I went to the Causby home and I believe Mrs. Causby was at home but Mr.

Causby was away, and I believe the first opportunity that I really had to discuss with them the purpose why the Government wanted an entry permit was one evening, I think it was in May of 1943, I went to the home and we sat down and discussed the purpose of the Government being desirous of an entry permit.

24. Q. Did you secure the right of entry at that time?
A. No, I did not.

25. Q. Did you secure the right of entry for the purpose of ascertaining the need of trimming the trees at any time?
A. I did not.

26. Q. To the best of your knowledge and belief has the Government ever attempted to enter upon the property for the purpose of trimming the trees on the property?
A. It has not.

27. Q. There has been some testimony placed into the record that at the time you interviewed the Causbys that some statement was made by you to the effect that you considered them in a dangerous location. Was any such statement ever made by you to the Causbys at any time?
A. No. I would like to explain. Mr. and Mrs. Causby as I recall our conversation related to me that planes would come over their home and also would take off from the airfield and come directly over the house, and they discussed what they considered flying hazards. I did not take it upon myself to say whether that was dangerous or not dangerous, that was not my purpose there. I very frankly stated to them that the only purpose of entry permit was to permit the Government to come upon the premises to ascertain whether or not it would be necessary to cut the trees or top the trees which were immediately around the home.

28. Q. Was anything said by them at that time relative to the Government taking their property?
A. As I recall, Mr. Causby stated that he thought the Government ought to buy the property, and in discussing what he considered the nuisance of the planes coming over his house I remarked that perhaps Mr. Causby should not have a quarrel with the War Department, since the airport

was not established by the War Department but was established by the citizens or some organization in Guilford County.

29. Q. And that was substantially the subject of your conversation with the Causbys?

A. That is right.

30. Q. Since May 1943, since you have been assigned the acquisition of land for the Greensboro-High Point airport authority, about how many times have you been on the Greensboro-High Point Airport—approximately how frequently?

A. During the month of May, June and July of 1943 I was on the airport property frequently, I would think as many as three or four times each month.

31. Q. Have you watched the improvement at the end of the runways which are close to or near to the Causby property—have you seen that improvement developed?

A. Yes, when I first came to the property at that time it belonged to the Lindley Nursery. There were green
180 houses and also a big barn in which they stored equipment. I saw those buildings removed, or at times when I was on the airport property the buildings were removed and the premises cleared and the land was leveled off, that is the underpinning of these buildings were leveled off at the end of the runway. However, the concrete part or the hard surface portion of the runways have never been extended.

CROSS-EXAMINED FOR PLAINTIFF

32. Q. You mean they have not been extended during the past two or three years?

A. That is what I meant.

33. Q. And the extension was a matter of extending the runways and seeding it, putting grass there—this map shows grass?

A. I don't recall about whether it shows grass or not.

34. Q. I ask you to look at Government Exhibit No. 3, which has been introduced, and see if it does not show seeded areas at the end of each runway?

A. Graded and seeded. Yes, it does. I would like to say, however, that today is the first time I have seen this particular map.

35. Q. Improvements were made and obstructions removed and leveled off—that is the extension made?

A. That is correct.

36. Q. What you meant is no concrete was added?

181 A. That is right.

37. Q. There are no houses now and were not any after you acquired the Motsinger and Lindley Nursery properties and removed those—there were no houses then between the end of the runways and Causby's house?

A. No, sir.

38. Q. And there are none now?

A. No, sir.

39. Q. And the area you described between Motsinger and the Lindley Nursery property and Causby property is vacant and smooth, and no house; this property in here, between the shaded area, representing the land the Government acquired, and the Causby property, there are no houses?

A. No, sir.

40. Q. And there are no trees, are there?

A. The only trees are small trees and I think possibly a few of the trees have been removed in that vicinity.

41. Q. There are no trees until your get to the Causby property?

A. I think that is correct.

42. Q. And no houses. Now, in the conversation you had with the Causbys, were there some engineers present—one or two times?

A. No, sir. The only time that anyone was present and I discussed this with Mr. Causby was Mr. W. Fred Williams, Project Manager of this acquisition. We were together one day and went to Causby's home. As

182 I recall on that occasion Mr. Causby was not present but Mrs. Causby was there.

43. Q. Do you recall that he or someone there looking

after the Government's interest made the statement that the trees and all the buildings ought to be removed?

A. It was not made in my presence.

44. Q. The Government did attempt to gain an easement whereby they could top the trees?

A. No, sir.

45. Q. Mr. Causby would not agree to that?

A. He did not agree to sign an entry permit. He has never been requested to sign any easement.

46. Q. Did you talk to him about it in my office once?

A. Yes, I did.

47. Q. Did you suggest the Government might pay something for an easement and right to cut those trees?

A. If we found it necessary to cut the trees.

48. Q. Didn't you ask if my client would agree to that?

A. I think I asked you that if the Government found it necessary to cut any trees, but the point I am trying to make plain is that the whole purpose of the entry permit was to ascertain whether or not it would be necessary for the cutting of any trees.

49. Q. You do not contend that it was necessary to walk on that 100 foot strip in order to determine that, do you?

A. Mr. Causby asked me whether or not any trees
183 would have to be cut, and I frankly stated to him that that would have to be determined by the engineers with aid of instruments, that I could not say whether any trees would be cut or would not be cut.

50. Q. You had an easement on the property immediately adjoining him, didn't you?

A. No, sir. We had an entry permit.

51. Q. And did you cut all those trees?

A. I think some of them were cut. I have not examined the premises.

52. Q. And the only reason these were not cut is because Mr. Causby was not willing for them to be cut and took the position that what the Government did amounted to a taking of the land—isn't that what I told you?

A. I couldn't answer why the trees were not cut. All I can say is, we did not get an entry permit and the Government would not place itself in the position of a trespasser by going upon the premises.

53. Q. You stayed around there several days, didn't you, over a period of two or three weeks?

A. Not at one time. I stayed as much as two or three days.

54. Q. Do you remember telling him if he did not sign the entry permit the Government would have to take the land?

A. I told him if the Government found it necessary to go upon the premises that it would not go without
184 an entry permit or without the legal right to do so and that the only recourse the Government would have, if it found it necessary to go upon the premises, would be by a condemnation proceeding.

Mr. COMER. I think that is all.

185 CERTIFICATE OF REPORTER

I, Clara E. Cheek, reporter, hereby certify that at the time and place aforesaid, after being duly sworn by the Commissioner, I did well and truly take down and transcribe the questions propounded to and the answers given by said witnesses so called by defendant; and that the foregoing record is a correct transcript of the proceedings and testimony so had therein.

In Witness Whereof, I have hereunto set my hand this 4th day of May, 1944.

CLARA E. CHEEK,
Reporter, 432 Southeastern Bldg.,
Greensboro, North Carolina.

186 GEORGE A. LACROIX, a witness on behalf of the defendant, having first been duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. What is your official position?

A. Commanding Officer of the Second Ferrying Service Station Basic Unit 571, located at the Greensboro Airport.

2. Q. How long have you been Commanding Officer at the Greensboro Airport?

A. I was activated on July 10, 1943.

3. Q. Have you been there continuously as Commanding Officer of the Army Air Station since that time?

A. I have.

4. Q. And are so acting at the present time?

A. That is right.

5. Q. Will you state the improvements that have been made by the United States Government or by the Army at the time you were stationed at the Greensboro-High Point Airport?

A. When I arrived at Greensboro there were two buildings located next or adjacent to the road. Those buildings are 20x100 feet long. I will add also that there were two latrines attached as part of the building, setting back of it, and since that time there have been erected five additional buildings, mess halls, two barracks, a crash station, and an operations building.

187 6. Q. Are these buildings you have just enumerated erected on property which belongs to the Municipal Airport Authority, or are they on real estate that has been acquired by the United States Government for army purposes?

A. The property or land that the buildings are erected on is leased property, leased by the Airport Authority to the United States Government.

7. Q. What was that answer?

A. The buildings are on property leased by the Airport Authority.

8. Q. Have you a copy of that lease in your possession?

A. I have had it in my possession for a short period of time just to read it.

9. Q. Under the terms of that lease that you have had in your possession, does the army have the exclusive right to the use of the airport, the runways and operations office on the airport?

Mr. COMER. I object, as the lease speaks for itself.

The COMMISSIONER. We will see what bearing it has on it and will let it go in.

A. As I remember the lease, reading it, it just pertains to 10 acres of land, the original lease. I do not remember ever reading any operating rights attached to that lease.

10. Q. Do you know from your own personal experience as commanding officer stationed at the airport, that you have not had exclusive use of the runways and
188 operations office?

Mr. COMER. I want to preserve any rights I have, and this cannot be anything but an attempt to prove the contents of something which may be in writing.

The COMMISSIONER. I do not think that was the question. I think the question was, as a matter of fact, did he have complete absolute use of it or did somebody else also have the right to use it as a matter of fact. I think it is competent.

A. The Army has never had exclusive use of the airport. There have been civilian operators and civilian pilots and civilian owned planes based and fly there. The traffic is controlled by the Civil Aeronautics Authority.

11. Q. As a matter of fact, commercial air lines have also been using that airport?

A. Yes, they have two trips in a day and two at night.

12. Q. Has the army as a matter of fact had any control over the airport cafe located on the airport ground?

A. None whatever.

13. Q. Has the army had any control over the business office located on the airport grounds?

A. None whatever.

14. Q. Has the army had any control over the data and operations office located on the airport ground?

A. None whatever.

189 15. Q. Has the army had any control over the weather bureau station located on the airport ground?

A. To clarify that, the only way I can answer that question is to state that there are two weather stations on that airport, one controlled by the army and then the other controlled for any other use, civilians or navy or anybody who wants to use it.

16. Q. And the one weather station is the one that has been established by the army and over which you have control?

A. That is right.

17. Q. The other weather station located at the time you went there is not under your control?

A. None whatever, no control.

18. Q. In regard to the maintenance of the runways and field itself, have those been maintained by the army or by the Greensboro-High Point Airport Authority?

A. To the present time since I have been there, there has been no maintenance to my knowledge, and I would not be qualified to answer that question thoroughly, because there might have been some by the Post Engineers, which is another branch of the service.

19. Q. Have the runways been extended at that airport since you came to that post as commanding officer?

A. No, the runways are exactly the same length.

20. Q. Has any work been done on the approaches to the runways since you came to that station as Commanding Officer?

190 A. There was some construction work going on, there was grading going on when I arrived at the station and was being done by civilian contractor, and I do not have too much knowledge as to the way the land was acquired, or just how much the army has or whether the army actually owned that land.

21. Q. How long have you been there?

A. Since last July.

22. Q. How long since the army was established there when is the lease dated?

A. The lease is dated May 11, 1942.

23. Q. When were these buildings put up?

A. I would say that the construction on the buildings started in September or October last year.

24. Q. What has that improvement to the approaches of the runways actually consisted of?

A. I would say from an estimate there was approximately on the southeast runway 1000 feet or less than 1000 feet of ground that was obstructed with an excavation. Looked to me when I first arrived as though there was some building which had been removed and a cellar graded off and grassed. On the other end of the same runway, which would be the northwest end of the runway, there is a larger tract of land that had some hills on it, and it was a sort of terrace, and those were taken off and grassed. That is the only construction in grading that I know of being done.

191 25. Q. What experience have you had in aviation prior to the time you entered the service? Outline it briefly.

A. I started flying in 1914 and I flew considerably in the last war and I barnstormed with airplanes after the last war, and I have been connected with the operation of airplanes other than approximately four years of that time.

26. Q. Do you mean to say then that since the last war when you first started in aviation that you have been actively engaged in aviation with the exception of a four year period up to the present date?

A. That is correct.

27. Q. Prior to the time you came to this Greensboro-High Point Airport as Commanding Officer, have you had any experience with army planes?

A. Yes, I was director or commanding officer of the operational Training School at New Castle Army Air Post for about six or seven months.

28. Q. Will you explain to the Commissioner for the record exactly what is meant for an aviation standpoint by the angle of glide, or glide angle?

A. There is a glide path which has absolutely nothing to do with the angle. The glide path is a path which the airplane makes through the air. The glide angle is an angle of obstruction relative to the runway. I might, to make a statement that would make it simple to understand, put it this way, that for every foot of obstruction at
192 the end of a runway you shorten that runway so many feet. It affects the airplane both going and coming in. The glide angle would be an obstruction at the end of the runway of so many feet from the end of the runway, and in comparison to its height and relation to the level of the runway.

29. Q. Will you state, if you know, what are the regulations of the Civil Aeronautic Authority relative to the glide angle or angle of glide for airports which are designated as approved by the CAA?

A. The regulations that are required by the CAA, and I would not state they are required, because I know of several airports which are below the minimum they desire. The minimums they desire are a glide angle of 30 to 1, taken from the end of the runway.

30. Q. What do you mean by 30 to 1?

A. There should be a clear approach or no obstruction, —I would phrase that different. 30 to 1 means there will be a clear approach for thirty feet for every foot of height of any obstruction, or 30 feet to every foot of height, that is taken from the end of the runway.

By the COMMISSIONER:

31. Q. In other words, at the end of the runway, if you were to have a perpendicular rod, you count 30 feet away from that for every one of those feet?

A. That is right. If the obstruction were directly at the end and it was one foot high, it would shorten that runway, this portion of the runway would be unusable

for 30 feet in front of that obstruction.

193 By Miss FAGAN:

32. Q. Do you recall, Capt. LaCroix, any accidents which have taken place upon that airport during the time you have been Commanding Officer at the airport?

A. Yes, there was one accident there at the end of the northeast runway, or approximately a mile and a half off the end of the runway.

33. Q. How far would it be approximately from the property of Thomas Lee Causby, that is in litigation here?

A. In a rough estimate it would be two and one-half to three miles.

34. Q. Which type of plane was that?

A. That was a navy plane.

35. Q. Approximately when did it happen?

A. Last September I believe.

36. Q. Did you assist in any way with the investigation made of that accident?

A. I did.

37. Q. Was that plane that crashed at the airport scheduled to land at the Greensboro-High Point Airport?

A. We could find no record of it.

38. Q. Had it been scheduled to land, would there have been a record of it?

Mr. COMER. I object, this is conjectural.

By the COMMISSIONER:

39. Q. What is your practice in regard to that; if a plane is scheduled to land, what is your custom?

194 A. An airplane scheduled at our airport, all military aircraft file a flight plan and in that plan is embodied the time of arrival, estimated time of arrival, and when the airplane arrives at our airport we record the actual time of arrival, and then we must notify the airport from which it departed the time it arrived at our airport.

40. Q. I wish to know whether or not prior to the time the plane appears in the sky, you have any knowledge that one may arrive or look for one or expect one?

A. Yes, we have that knowledge.

41. Q. You are advised of the probable arrival of the plane, or intended arrival of the plane?

A. That is correct.

By Miss FAGAN:

42. Q. In response to a question posed by plaintiff's counsel to the plaintiff, Question No. 37: "State whether they come in at night?", the plaintiff replied "They come in at night more than they do in the daytime". I want to ask you this question: What percentage of the army flying at that airport is done during the nighttime?

Mr. COMER. I would like to limit the question to the time since he has been there.

The COMMISSIONER: He must not testify to things he cannot testify of his own knowledge.

By Miss FAGAN:

43. Q. The question is predicated upon that assumption.

195 A. I could clarify that to state that the airport's regulations at the present time insofar as army aircraft are concerned, provided that they are to use that airport for landings by prearrangement only, that is a matter of record.

Mr. COMER. I move that be stricken, because it does not answer the question.

The COMMISSIONER. It is not responsive to the question. I do not know that I will strike it.

By Miss FAGAN:

44. Q. Do you mean from that, that any night flying or any daytime flying must be by prearrangement with the airport?

A. Any night flying insofar as army aircraft. I believe you asked me concerning army aircraft, and I answered it that it can only be done by prearrangement. The percentage in my estimation would be less than 1%.

45. Q. Of night flying?

A. That is right.

46. Q. In comparison to the total?

A. In comparison to the total by army aircraft.

47. Q. Assuming that the operations office of the airport have the total number of planes, that is army planes, which have taken off and landed from that airport, then would your answer to that question mean that approximately 1 of that total figure could be night flying?

A. Regarding the army, yes.

48. Q. Is this one navy plane that you referred to
196 that struck between two and three miles from the Causby property the only accident that has been on the airport in which army craft has been involved, or Government craft has been involved, since you have been Commanding Officer at the airport?

A. We had one other accident that happened right on the airport. A pilot landed his airplane without putting the wheels down.

49. Q. Did you make an investigation of that accident?

A. No, I was relieved at that time. I know of it because I examined the records.

50. Q. As Commanding Officer, it was your duty to examine the records?

A. That is right.

51. Q. From that investigation, can you give any details and tell us exactly how far that was from the Causby property?

A. I would say that distance would be between three-quarters of a mile and a mile.

52. Q. Are those the only accidents which have happened, to your knowledge?

A. The only ones that I know.

53. Q. The runway which goes to the Causby property, that is the path of glide being over the Causby property, which runway on the airport is that?

A. That is the southeast runway, it is No. 14.

54. Q. Is that the longest or the shortest runway of the field?

197 A. That is the shortest.

55. Q. Is it used as frequently as the other run-

way on the field?

A. No, it is not.

56. Q. Why not?

A. The wind blows from that direction at approximately three to four percent of the time, and most airplanes take off against the wind and land against the wind.

57. Q. Will you explain just what you mean by wind rose which appears on some of the maps of the airport which have been introduced in evidence by the defendant?

A. Wind rose is a means of giving notice of the direction of the wind and percentage of time it blows from that direction, generally on engineering maps pertaining to airports.

58. Q. Have you checked on the wind-rose for this southeast runway, the path of glide which is over the Causby property?

A. I have?

59. Q. Are you now in position to state from that investigation you have made with the weather bureau and from your own figures at the airport what percentage of the time the runway over the Causby property can be used by army aircraft?

A. Four percent.

60. Q. On the basis of the number of army aircraft which have taken off or landed on the airport itself, from the figures obtained from the operations office, how many planes would that make on an average per day?

198 Mr. COMER. I do not want to be technical about this, but apparently this is an effort to refute actual statements of counts that people stood there a few minutes and counted coming in. I am not discrediting the witness' intentions to tell it the best he can, but it is conjectural, and I do not believe it is competent.

By the COMMISSIONER:

61. Q. Can you tell us from your own personal knowledge how many planes every day on an average used that

particular runway; that would be a matter of fact within your own knowledge, if you are able to answer it.

A. I would have to estimate that as a guess.

62. Q. What do your records show, if they show it?

A. I might clarify that to state that I have never stood at the end of the runway and counted them.

The COMMISSIONER. I think it would be almost too speculative to be very helpful.

By Miss FAGAN:

63. Q. In response to question 33 posed to the plaintiff by plaintiff's counsel: "How many planes approximately would go over there during the day, large planes, if you know", and the answer of the plaintiff, "Well, it spells sometimes five up to twenty-five come in inside of an hour's time for a day and a night". I ask you whether or not that would be possible, for twenty-five planes to come in at that airport in an hour's time?

199 Mr. COMER. I want to be heard.

The COMMISSIONER. The answer is given in the record of the plaintiff and this present witness on the stand is asked to give any facts that he knows with regard to that, and also as an expert in engineering opinion. I think in order for a true picture to be made of the situation for the Court to determine the truth of the matter, this witness may be allowed to give any facts that will throw light on it and if the question is engineering and as an expert, also his opinion basing his opinion upon the facts out there upon which he bases his statement, giving that as an expert, whether or not it would be possible for twenty-five airplanes to land there in an hour.

A. I will have to have the question clarified in my mind as to the size of the airplanes.

By Miss FAGAN:

64. Q. Would it be possible for twenty-five army planes to have landed on that airport within an hour?

A. It still would have to be determined in size. The

army has small cub airplanes and the army has medium sized trainer planes, and it would be possible to land twenty-five of those under extreme conditions, but of the bomber type it would be absolutely impossible to land twenty-five on that airport in one hour.

65. Q. What would be possible to land?

A. My estimate of figures taken a short while ago
200 was that we could not land more than twelve bombers in one hour.

66. Q. During the time that you have been on the airport as commanding officer, what is the maximum number of army planes that you have landed on that airport in one hour?

A. I would not be qualified to answer that question.

67. Q. Would your records show that?

A. The records would show, but I do not have them.

68. Q. Would it be possible for a plane to pass over a tree and knock the leaves off the top of the tree and land safely without difficulty?

A. Yes, that would be possible if the leaves were dry and about ready to drop off, the backwash of the propellor might blow them off.

69. Q. The planes themselves would not clip the tops of the trees?

A. I will answer the question to the best of my ability this way, if the airplane hit the tree, in all probability it would cause an accident of some type, because of the speed at which the airplane was going and how far down the tree. I have seen the propeller blow them off.

70. Q. But it was not from actual contact of the plane with the tree?

A. No.

(Ten minute recess.)

201 71. Q. Captain LaCroix: I hand you a paper which has been marked as Government Exhibit No. 4, which is a map of the Greensboro-Point Airport, which has in the legend thereon a wind-rose for Greensboro, N. C. Would you kindly explain that as it pertains to the

airport itself and to the runway over the Causby property?

A. This wind-rose shows that taking off over the Causby property would be done 4% of the time and landing over the Causby property would be 7% of the time. This wind-rose is compiled by the United States Weather Bureau.

72. Q. Would that mean then that the other runway which is not in line with the Causby property would be used for planes for the balance of the time in taking off and landing?

A. Pretty near so. There might be a flat calm and in that event they would use the next runway which is the northeast-southwest runway.

73. Q. That is not the runway over the Causby property?

A. That is not the runway over the Causby property.

By the COMMISSIONER:

74. Q. Which is the runway on the Causby property—put "E" and your initials on it?

A. That would be the airplane taking off, 4% taking off and landing on that property 7%.

75. Q. Put a "C" on that, and your initials, so we can identify it.

A. (Witness marks on map as instructed.)

202 By Miss FAGAN:

76. Q. Going back to this question of glide angle, assuming that a house is 2275 feet away from the end of a runway, and that that house is 20 feet high, would that be within the 30 to 1 glide angle as prescribed by the CAA?

A. Yes, well within it.

77. Q. What is the glide angle from the end of the runway of an obstruction 2275 feet away, with the obstruction being 20 feet high?

A. 113.7 and a small fraction over.

78. Q. Would you explain that further as to how much greater that is than the 30 to 1 glide angle as set by the CAA as a desired glide angle?

A. That is a little over three times that determined as an ideal situation.

79. Q. And your safety factor would be three times greater than that considered as a safe glide angle by the CAA?

A. That is right.

80. Q. Assuming that an obstruction is 2275 feet away from the end of the runway and the obstruction is 50 feet high, what would the glide angle be there?

A. That would be 44.1 and a fraction over. I can reduce that to hundredths of an inch.

81. Q. That is well above the safety glide angle as prescribed by the CAA?

A. That is correct.

203 82. Q. Assuming that your house is 2165 feet from the end of the runway and the obstruction is 20 feet high, then what is the glide angle?

A. 108.2 and a fraction over.

83. Q. Assuming that your obstruction is 2165 feet from the end of the runway and assuming that your obstruction is 60 feet high, then what is your glide angle?

A. It would be a fraction of 36 to 1.

84. Q. That is assuming that your obstruction is 60 feet high?

A. Yes, and 2165 feet away from the end of the runway.

85. Q. And that is well within the safe glide angle of the CAA?

A. Yes.

86. Q. In the use of those runways, what portion of those runways are actually used in landing and taking off; is it the actual hard surface portion of the runway or the graded portion approaching the runway?

A. The hard surface portion of the runway is the only portion that military aircraft are allowed to land on. These runways, if I may add, are marked in thirds by yellow markings, and if an airplane is taking off and reaches the point of the second yellow mark and has not left the runway, it is the pilot's duty to discontinue taking off, as he is not

going to get off within that safe glide angle. If he is landing and is not on the ground or the wheels are not on the ground when he reaches the first yellow marker he is
204 instructed to go around and attempt another landing.

87. Q. As a matter of actual practice on this airport of which you are commanding officer, do planes land or take off on the graded approaches to the runway?

A. No, they do not.

88. Q. As a matter of actual practice in the operation of that airport, must all planes land and take off on the hard surface portion of the runway?

A. That is correct.

89. Q. These yellow markers you were talking about on the runway, can you clarify that further as to showing us on these airport maps the actual footage on the hard surface portion of the runway at which those yellow markers would be shown?

A. One runway, the east-west—north-south, if I am correct in this, is 3370 feet long, and that is divided in thirds, the other runway is 4000 feet and that is divided in thirds.

90. Q. The short runway is the one over which the path of glide goes over the Causby property?

A. That is right.

91. Q. So the last safe marking on the runway from which landings and takeoff would be over the Causby property would be how long?

A. From the end of the runway?

92. Q. Yes.

A. 1123.1 feet.

205 93. Q. From the end of the runway?

A. That is right.

CROSS-EXAMINED FOR PLAINTIFF

94. Q. Of course, Capt. LaCroix, what you have been testifying to here is what is supposed to happen out there if they follow instructions? In regard to how they take off and how they come in, what you have been testifying

to is according to the instructions that they have, assuming that they obey them?

A. That is right.

95. Q. You would not say, would you Capt. LaCroix that no plane has ever, in taking off, touched this dirt portion of the runway?

A. Yes, I know of one case where it touched it.

96. Q. If it were not the case, they would not have it smooth?

A. I would not say as to that.

97. Q. That is the reason it is smooth?

A. I would not say that.

98. Q. The plane can land on the ground without any concrete?

A. That is right.

99. Q. And they do land on the ground daily?

A. That is right.

100. Q. And they can land in a field that is not as smooth as this paved portion?

A. That is correct.

206 101. Q. That was the purpose of this extended graded portion that was being graded when you came to Greensboro?

A. That is correct.

102. Q. And that extends for a distance of about 500 feet, doesn't it?

A. I believe so.

103. Q. And from the end of the graded portion to the Causby residence, I will ask you if that is not only 1573 feet, if you know?

A. I did not measure it, I do not know.

104. Q. Now I ask you if it would not be likewise true that a pilot might, in landing, strike the graded portion of the runway before he reaches the concrete?

A. It is possible.

105. Q. And if he does that, that reduces the angle of glide over property 1600 to 2100 feet away?

A. That is correct.

106. Q. And if he touches it as he goes over, instead of

the wheels taking off on the concrete, if they take off on the dirt portion that would likewise decrease the angle of glide?

A. That is correct. I would answer that that would decrease his glide path. The angle of glide remains fixed.

107. Q. That is, it would make it come a little closer to the trees?

A. That is correct.

207 108. Q. I want to ask you this, if at the end of the runway, the graded portion is only 1573 feet from the trees at the Causby property, and if the trees are 50 or 60 feet high as testified in the other hearing, from 50 to 60, I will ask you from that distance if that would be a safe angle, 1573?

A. Depending on what type airplane they are flying.

109. A cub plane, for example, would have no trouble getting plenty of altitude to be over those trees?

A. That is right.

110. Q. A heavy bomber would come closer to the trees than a cub plane?

A. That is right.

111. Q. Assuming you have a heavy bomber that takes off and does not leave the runway until it reaches the end of the paved portion, and assuming that distance is 1573 feet, it would be bound to clip the top of the tree 60 feet high?

A. Not necessarily.

112. Q. You said 30 to 1.

A. That is right. That is the ideal condition that the CAA requires.

113. Q. Oughtn't it to be 1800 feet away?

A. That would depend on barometric pressure and temperature.

114. Q. If it is 30 to 1 shouldn't the object 60 feet high be 30x60, or 1800 feet away?

A. That would be correct.

115. Q. If it is 1573 feet away, it is too close for

safety?

208 A. Again I would say it would depend on conditions.

116. Q. Assuming it is 30 to 1?

A. On that estimation.

117. Q. It would be too close?

A. Yes, sir.

118. Q. The dirt portion of that runway is smooth and fairly well packed and seeded?

A. Yes, seeded.

119. Q. And raised a little from the surrounding ground?

A. It is approximately level. There is quite a noticeable incline on the other end of the special runway which we are discussing.

120. Q. You testified awhile ago that in taking off planes would use that runway leading to the Causby house 4% of the time?

A. According to that wind-rose.

121. Q. And according to the wind-rose, in coming in they would use it 7% of the time?

A. That is right.

122. Q. And 7 and 4 equal 11?

A. Yes, sir.

123. Q. So 11% of the time the planes are either coming in and taking off over that house?

A. That is right, estimating there is a constant stream of planes coming in.

124. Q. How many runways do you have?

A. Two, that gives four directions.

209 125. Q. In other words, they are using that 11% of the time?

A. Approximately that.

126. Q. You testified awhile ago that under your system they would not come in over 1% of planes at night. You did not mean that those people did not see planes there throwing light all around?

A. I don't know about throwing the lights, but I would not say that people did not see planes coming in.

127. Q. At times haven't you seen bombers come in

and the lights did not work and they had to get civilians to go in and park their cars with the lights headed in?

A. I don't recall that since I have been here.

128. Q. Sometimes several planes did come in at night?

A. I believe airplanes come in during the night, other than army planes, but the question was on army planes.

129. Q. At what time of the night did this navy plane that crashed come in?

A. That was daytime.

130. Q. That was the one that killed four people?

A. That is right.

131. Q. That was on the other end of the runway?

A. I would say probably 3 degrees from the runway.

132. Q. That plane came in over the Causby property?

A. I would not say.

133. Q. Wasn't it headed in that direction?

A. When I saw it, it was headed towards Atlanta, or headed toward the airport.

210 134. Q. From the position that navy plane was traveling when it crashed, I will ask you if you don't know as a matter of fact it must have come over the Causby property?

A. I doubt very much if it came over the Causby property, because I was flying at that time myself. I was behind the airplane.

135. Q. You would not be positive about that?

A. I would not be positive as to whether the airplane at any time passed over the Causby property, no, I would not be positive.

136. Q. The plane had not landed previous to the crash?

A. No, sir.

137. Q. It was not taking off?

A. No, sir.

138. Q. I will ask you, Capt. LaCroix, if within two months of the time this navy plane crashed, if some type of craft, navy craft or army craft, did not attempt to take off on the runway leading toward the Causby prop-

erty and have a wreck between the end of the runway and the Causby property?

A. I can give you the complete story of that if you wish.

139. Q. Just answer my question.

A. That was no wreck, no damage to the airplane whatever.

140. It did fail to get off?

A. Yes.

141. Q. And had to come back to the ground?

A. No, it never got off the ground.

211 142. Q. Didn't they tow it back?

A. Yes, they did.

143. Q. Why did they tow it back?

A. We towed it across the road because we did not want the propellor started. The airplane did not leave the ground, the pilot assumed there was something wrong with the airplane, and when he came to this second yellow marker, determined two-thirds had been used and he pulled the throttle back and applied the brake, and he did not want to tip the airplane on its nose, due to what he assumed was soft ground and the airplane ran across the smooth part and crossed the road and stopped in the gutter in the highway.

144. Q. And you say that would not be classified as any kind of accident?

A. No, sir, no accident. I wrote up from form 141, the report on it, and it was not considered an accident.

145. Q. It was an accident to a layman?

A. Possibly, but it would not be considered as an accident inasmuch as there was no injury and no damage to an airplane.

146. Q. It was pulled out?

A. Yes, but I could have taxied it out.

147. Q. The people who saw it, gathered around, 75 or 100 people?

A. I would not know the number of people.

148. Q. The other plane you talked about, four people were killed?

A. That is correct.

212 149. Q. And a house destroyed?

A. That is right.

150. Q. You say that was about a mile and a half from the Causby property?

A. More than that. It is a mile and a half from the end of the runway, and I would say it must be pretty close to two miles from the Causby property to the other end of the runway you mentioned.

151. Q. Three miles is not much for a plane making 400 miles an hour.

A. Very little.

152. Q. You testified awhile ago that you were sure that navy plane did not intend to land? Do you have any record of it planning to come in or come over the airport?

A. No record of its planning to come over the airport. We have been unable to determine what caused the airplane to be there, in our investigation, and I was the investigating officer.

153. Q. If that airport had not been there, he would not have come in?

A. I don't know. I don't know what was in the pilot's mind.

154. Q. He was pretty low?

A. My level was 1200 feet and he was at the same level. He was heading from the northeast direction when I saw him.

155. Q. At that time where were you with reference to the center of the airfield?

213 A. I was flying in an airplane approximately five miles northeast of the airport.

156. Q. If you know, did he ever pass directly over what you might term the hub or center of the airfield?

A. I don't know about that.

157. Q. You testified that other planes used the field. The commercial lines have no bombers that you know of?

A. I would not have any information about that.

158. Q. Have you ever seen a bomber that was not a navy or army plane?

A. Yes, I have seen them used for experimental purposes.

159. Q. Commercial planes or just occasionally mail planes or small private planes?

A. There are four commercial airline planes landing and taking off, two daily and two nightly.

160. Q. They have been doing that for sometime?

A. That is right.

161. Q. Let me ask you this as an expert, and I think you are. When a large bomber comes within 60 feet and directly over a house at night, the people in the house would hear considerable noise if they were awake?

A. Depending whether he is taking off or landing. In taking off they would hear considerable noise, landing they would hear less.

162. Q. Don't they turn the lights on when they land?

A. Yes.

214 163. Q. That will flood the house if they are within fifty feet of it?

A. I believe the light would show on the house. That is the purpose of lights, to see the house.

164. Q. That would be disconcerting to one trying to sleep?

A. It would not disturb me because I lived right there myself. It might disturb some one else.

165. Q. Did you actually measure this distance about which there has been so much discussion?

A. No, I testified I did not actually measure it.

REDIRECT EXAMINATION FOR DEFENDANT

166. Q. Coming back to the clearance of approaches to the runways, I believe Mr. Comer asked you as to the use of them with a plane taking off on the approaches to the runways themselves. As an actual construction matter from an aviation standpoint, was the purpose of the clearance of those approaches for the use for landings or take-offs, or cleared only to remove its obstruction?

A. The latter is correct, to clear and remove obstructions, that is not to be used by military aircraft under any

circumstances, and if they use it it would be written up as a violation.

167. Q. Have those approaches actually been used for takeoffs or landings?

A. Outside of the one instance mentioned, I have never seen a mark on the grass.

168. Q. From a safety factor, and from an aviation standpoint, would a four motored bomber be considered more safe in the event of an accident or mechanical failure than a so-called cub type of plane?

215

Mr. COMER: I do not think that would throw any light on this question.

Miss FAGAN. I think the evidence will show that prior to the time the army went in there this airport had been used by private and commercial planes, and I think plaintiff testified, until the army went in there he felt no sense of lack of safety by living close to the airport, and it is only because the four motored bombers and army planes come in there he feels uneasy.

The COMMISSIONERS. If you want it in the record put it in.

A. That is a very very hard question to answer, because you have asked me in the event of an accident.

169. Q. May I amend that question to say, in the event of mechanical engine trouble.

A. I might state this, in my opinion that I would feel very much safer in a multi-engine plane both taking off and flying than I would in a single engine airplane. However, there are many factors involved there.

216 RE-CROSS-EXAMINATION FOR PLAINTIFFS

170. Q. Wouldn't you rather the plane would go 200 feet over your house than to clip the trees over your house?

A. I would not want it to clip the trees in any event.

By the COMMISSIONER:

171. Q. You have detailed your instructions in regard to landing and taking off in the yellow lines outlined in

thirds. Those are the instructions. Now, as a matter of fact and absolute practice, are those instructions observed, or are they not observed?

A. They are observed, and I have not seen since I have been at this airport but one or two violations of those rules and regulations.

Lieutenant Louis K. Dunagin, a witness produced on behalf of the defendant, having been duly sworn at a previous hearing, was recalled for further examination, and in answer to interrogatories testified as follows:

1. Q. Lieut. Dunagin, I understand that you have been associated with the Post Engineers office at BTC #10 in Greensboro?

217 A. That is right.

2. Q. At the present time, to what station are you assigned?

A. As of last evening I received information that I am assigned to detached service, Greensboro-High Point Airport.

3. Q. Having been attached to the post at BTC #10, do you have in your possession at post headquarters the copies of the original lease between the Greensboro-High Point Airport Authority and the United States of America on the portion of the property which is leased from the Greensboro-High Point Airport Authority by the United States Government?

A. Yes, we have the copy of that.

4. Q. Did you personally have made under your supervision a copy of that lease?

A. Yes, sir.

5. Q. I hand you what has been marked as Defendant's Exhibit 5 for identification. Did you actually have this copy of that lease made from the original which is on file in the War Department, filed at BTC #10?

A. It was from signed copy at the post engineers office at BTC #10.

6. Q. And this copy, Exhibit 5, is a true and correct copy of the original in the file at BTC #10?

A. That is correct.

7. Q. Having been certified by you as a true and correct copy of the original made under your supervision?

A. That is correct.

218 8. Q. I believe that you were on the stand in the hearing which was had in this matter on April 25, 1944 and testified relative to certain measurements which were made of the distance and elevations between the ends of the runways at the airport and the Causby property?

A. I do not know that elevations were given, but horizontal and vertical distances were given.

9. Q. Since that time, have you made any further measurements of the distance between the ends of the runways at the Greensboro-High Point airport, and the Causby property, and have you made any measurements of all elevations as they affected the runways and the Causby property?

A. Yes, I have as of yesterday.

10. Q. In whose company did you make those measurements and computations?

A. It was coordinated between Mr. Baldwin, the resident engineer representative at BTC #10.

11. Q. And you and Mr. Baldwin made these measurements yesterday, both of you together, and have made notations of the measurements which you procured at that time yesterday?

A. That is correct.

12. Q. Did you measure the elevation of the runway, that is the end of the S. E. runway at the Greensboro-High Point airport?

A. We took the elevation of the end of the S. E. runway as given to us on the original plans of the runway.

13. Q. What did you find that elevation to be at the end of the S. E. runway?

219 A. It was given to us from the original plans as 898.93 feet above sea level, that is the end of the hard surface on the S. E. runway.

14. Q. Did you compute the elevation at the Causby property?

A. At the location of the house.

15. Q. State to the Commissioner in just what manner that elevation was computed.

A. That elevation was computed by Mr. Baldwin with a level. His levels run out and tie back into original starting point.

16. Q. What elevation was found at the Causby dwelling?

A. That was 893 feet.

17. Q. I notice that you are referring to some notes which you have there and to a plat which you have made. Are those the notes and plat you made at the time you made the original survey on the ground yesterday?

A. Yes, Mr. Baldwin and I worked together in the field and then went to the office and worked up these notes and plot together.

18. Q. Those are the original notes you made at the time of the survey that you are using to refresh your recollection?

A. That is correct.

19. Q. State to the Commissioner exactly what computation you made and what measurements you made after you procured the elevation at the end of the S. E. runway and the elevation at the house; state how you proceeded to make up the plat you now hold.

220 A. We started at a point, the vertical elevation at the end of the S. E. runway, we plotted that on this plat and we extended it, the horizontal distance out to the house. Then above that house we plotted elevation of the glide angles.

20. Q. In procuring a line for computation, did you set any stakes from the end of the runway on the property line?

A. Not on the property line, I did not know where the property line was, I did not look for the property line, as far as I knew it was not in question, and all we were looking for and locating was the house, the tree and barn.

21. Q. Did you set stakes at the end of the runway to the distance you could compute to the house, the barn and the highest tree?

A. We did.

22. Q. State what procedure you used in procuring that.

Mr. COMER. We object to that.

Objection overruled. Exception.

23. Q. Go ahead.

A. The distance was measured with a steel tape and every 100 feet a very small chaining pin which is used in surveying for each 100 feet. Then 2500 feet from the end of the paved highway we located a wooden stake with a point in it, the size of a tack head.

24. Q. Using that method of measurement, what is the distance from the end of the S. E. concrete runway at the Greensboro-High Point airport to the Causby dwelling?

221 A. To the house it is 2275 feet.

25. Q. What is the distance from the end of the concrete portion of the S. E. runway, using that method of measurement, to the barn on the Causby property?

A. It is 2220 feet.

26. Q. What is the distance from the end of the concrete portion of the S. E. runway of the Greensboro-High Point airport to the tallest tree on the Causby property, using that method of measurement?

A. I assume that this tree is on the Causby property it was near his house. That was 2230 feet from the end of the paved runway.

27. Q. At the former hearing I believe you made the statement that according to your measurement by transit you found that the distance from the end of the concrete portion of the S. E. runway to the house was approximately 2500 feet. Do you care at this time to make any explanation of the difference as to the measurement of the distance which you gave at the former hearing, and the testimony which you gave at the former hearing, and the testimony which you have now given, as to the distance

from the end of the concrete portion of the runway to the house?

A. Yes, I would like to make a statement with reference to that. The original survey that was made—I forget the date—I was assigned at BTC #10 as Assistant Post Engineer at that time. I was requested by Capt. LaCroix to come out and make a survey to get some distances with reference to houses near the runway. I came out

222 with one man, which is all I could get at BTC #10 at that time, to assist me. We have quite a problem there with manpower, and all I could take was one man to make that survey there. Going out, when I got there I did not know exactly what was wanted, but I had a man with me and a transit and chain, but it was with reference to somebody else's property, and I had no right of entry on the property so far as I knew, so I stayed off, and that is the reason I did not use the chain. I made the measurement by transit, and where the difference came in the two measurements, rushed as I was at that time, I assumed that the paved runway was parallel to the highway. That being true, I turned right angle to the highway and measured from there, which does explain the difference in the two surveys.

28. Q. And you found on examination yesterday that the end of the runway does not run exactly parallel with the highway?

A. It does not.

29. Q. And in making your measurement by chain yesterday, you considered those distances you have just given to be accurate within what degree of error?

Mr. COMER. I believe I will object to that.

The COMMISSIONER. I think the witness is permitted to tell that he made the survey and mathematically within what degree of error it is correct according to his formula. If the plaintiff wants to make measurements, it has a right to do the same thing. Go ahead.

223 A. To the best of my knowledge and belief the survey as shown here on this plat, the vertical dis-

tances, are correct within one foot. The horizontal distances are correct within two feet.

30. Q. Lieut. Dunagin, these measurements which you have just testified, were they recorded by you on any plat which has been prepared by you?

A. I believe distances were shown.

31. Q. Are the distances which have been testified to by you and the measurements which have been made by you, shown by you on the plat which has been marked Defendant's Exhibit No. 6 for identification.

A. That is correct.

32. Q. And these are your actual figures shown on Defendant's Exhibit No. 6?

A. That is correct.

33. Q. Referring to this plat, will you explain this plat further, so far as your scale is concerned from which this plat has been prepared?

A. Yes. I extended the paved highway which is called projection of northwest-southeast runway and that construction of that, the concrete, is 150 feet wide. I extended that out in order to locate the house, the barn and tree with reference to that projection.

34. Q. That plat has been drawn to what scale?

A. The horizontal scale is one inch is equal to 100 feet, and the vertical scale, one inch is equal to 20 feet.

224 35. Q. Will you please mark on the plat labeled as Defendant's Exhibit No. 6 for identification your initials as to the point where you started your computation for the elevation of the concrete portion of the runway just draw a circle and your initial.

A. (Witness marks plat as requested.)

36. Q. And you procured the elevation then at the site of the dwelling on the Causby property by the method which you have just described?

A. That method used there, we set stakes 2100 feet from the end of the paved highway. That was the point from which we worked. We had it located both vertically and horizontally.

37. Q. Will you put an initial there at the stake you

located from which your computation was made?

A. (Witness marks plat as requested)

38. Q. Using that point for your computation, can you testify from the plat and computations and figures made by you as to the vertical measurements of the Causby dwelling from that elevation?

A. By the use of a transit Mr. Baldwin and I working together there, we worked from our base, which was the stake, our reference point, we worked from there and actually chained with a steel stake there to the house, barn and trees, and turned angles with a transit. That method is used in all surveys.

225 39. Q. In making up the plat which has been marked as Defendant's Exhibit No. 6 for identification, and computing the vertical heights of those three objects, did you use a 30 to 1 glide angle to compute?

A. I used 30 to 1 glide angle.

40. Q. On the basis of those computations, how far is the top of the barn below a 30 to 1 glide angle?

A. The top of the barn is 63 feet below the 30 to 1 glide angle.

41. Q. How low is the top of the house below the 30 to 1 glide angle?

A. From the top of the house is 67 feet below the 30 to 1 glide angle.

42. Q. How low is the top of the highest tree surrounding the Causby property below the 30 to 1 glide angle?

A. That is 18 feet. That is the highest leaf and the highest tree in that vicinity.

Plat identified and initialed by the witness Lieut. Dunagin is offered in evidence by defendant, and marked as Defendant's Exhibit No. 6.

CROSS-EXAMINED FOR PLAINTIFF.

43. Q. All the distances you have given from the end of the runway refer to the concrete portion of the runway?

A. Yes.

44. Q. The runway does extend from five or six
226 hundred feet where it is smooth and seeded and fairly firm?

A. I am not qualified to answer that question.

45. Q. Didn't you measure that distance too?

A. I noticed that on a map, I did not measure it.

46. Q. You would not go out and measure the thing twice with a difference of some three or four hundred feet in your estimation, and then not measure that distance?

A. Yes, because I was told to measure from the end of the runway.

47. Q. The runway includes the seeded portion too?

A. I cannot answer that question.

48. Q. Can't you distinguish that part that is smoothed off and extends some 500 feet, from the other part of the land, by looking—can't a layman do it?

A. I suppose so, but I know nothing about that. I was merely there for engineering detail.

49. Q. That is there for some purpose, the end of the runway and seeded?

A. I am not qualified to answer aviation problems.

50. Q. Isn't that as a matter of fact a part of the runway?

A. I am sorry I cannot answer that question. The runway has always been explained to me as the paved runway.

51. Q. You have got the paved runway, and then you have the extension of it?

A. I am not qualified to answer.

52. Q. Doesn't this runway, the part that is seeded
227 —isn't it a continuation of the paved portion?

A. Yes, it is.

53. Q. Doesn't it extend for 500 or 600 feet?

A. At least that.

54. Q. Then, if that is the case, the end of the seeded portion of the runway would be about 1600 feet from the Causby property?

A. I would have to check my map on that to see.

55. Q. It is a matter of calculation?

A. You say 500 feet?

56. Q. Assuming it is 600 feet, then the Causby property according to your figures would be approximately 1600 feet, would it not?

A. All I know, the house is 2230 feet.

57. Q. See how far it is from the end of the seeded portion of the runway—that is what I want to know.

A. Using your 600 feet to his house is 1630 feet.

58. Q. When you measured this before, you were just as certain about your figures then as you are now?

A. At that time I was not.

59. Q. Didn't you answer the question this way, when you gave the distance as approximately 2500 feet? Didn't I ask you this: "It could vary as much as two or three hundred feet?" and your answer was: "No, sir, it could vary as much as ten to twenty feet." isn't that your answer to my question?.

A. That is right.

228 60. Q. Then you thought at that time you were within ten or twenty feet of the actual distance?

A. Yes, for one reason. As I explained, the manner in which I was called to do an urgent and quick job.

61. Q. You did not explain that then?

A. I assumed that the runway was parallel to the highway and that was an error in my calculation at that time. The actual figuring with that one exception was within ten or twenty feet correct.

62. Q. You are a graduate engineer?

A. Yes, sir.

63. Q. You mean to say that at that time that just to make an observation, that you observed that it was paralled and the fact that it was not quite parallel would make a difference of 300 feet?

A. Yes, I did not have a map with me, but I was on the field there, and I do not know this is correct, but I imagine that runway was 800 feet from where I was standing to the highway and a lot of shrubbery growing in there.

The COMMISSIONER: I do not think any further explanation of a man who wishes to correct a former error is necessary.

64. Q. Then do you say the distance from the end of the concrete runway is how much to the house?

A. The house is 2275 feet.

65. Q. Now I will ask you if that could not vary as much as your other measurements varied?

229

Miss FAGAN. I object to that, as not being proper cross examination.

Objection overruled.

66. Q. That could vary as much as the other?

A. No, sir, it could not.

67. Q. Have you seen this map (handing witness blueprint)?

A. I have not.

68. Q. Do you know Mr. Lowe, a civil engineer here?

A. Very well.

Miss FAGAN. I object as not being proper cross examination.

Objection overruled.

69. Q. I will ask you if the exact distance from the end of the paved runway to the Causby residence is not 2165 feet instead of 2275, and if you have not made an error of 110 feet?

A. I said that horizontally our measurement was within two feet of correct.

70. Q. And you said before you thought that measurement was within ten or twenty feet?

A. Yes, sir.

71. Q. You say the elevation at the end of the runway is 898.93 feet and the Causby property is 893 feet?

A. Yes.

72. Q. And you told Miss Fagan that the highest tree, that assuming the 30 to 1 ratio and ideal flying conditions, the plane ought to miss the tallest tree 18 feet?

230

A. Correct.

73. Q. Were you out there when the engineers came about two years ago with regard to the removal of the trees?

A. No, sir, I was at BTC #10.

74. Q. Did you have anything to do with it?

A. I don't remember that incident.

75. Q. Were you there with Mr. Satterfield?

A. I may have seen Mr. Satterfield at the post or around town.

76. Q. Did you, or any other engineer in your presence, make the statement to Mr. Causby at any time that those trees would have to be cut?

A. I know nothing about that.

77. Q. The engineers cleared some houses and trees up to the Causby property, did they not?

Miss FAGAN. I object to that as going into a matter not covered on direct examination.

Objection overruled.

A. I cannot tell you, I don't know.

78. Q. Were you not here then?

A. We were building a $5,500,000 camp at BTC, and I was very busy.

79. Q. I understood you to say you were at the airport some?

A. I would run out there. I don't remember now what I was going there for. I might have been going
231 there just riding with somebody, just looking over the layout.

80. Q. This runway is almost parallel with the road; what angle will you say it describes?

A. That would be a guess, and I do not like to guess at angles.

81. Q. You did not get that angle, did you?

A. All I know it runs into the highway east of Causby's property.

82. Q. From Highway 421 leading to Winston-Salem, how much further do you say it is from that road to a point at the end of the concrete runway than it is from a point at the highway to a projected line with the runway at the Causby house?

A. It is less at the Causby house.

83. Q. How much less?

A. I don't know, it would be a guess. I do not like to guess at figures.

STIPULATION

It is hereby stipulated and agreed between counsel for plaintiff and defendant that Book 569 from the office of the Register of Deeds of Guilford County, North Carolina shows a deed from Paul C. Lindley and Helen G. Lindley, husband and wife, to the County of Guilford, bearing date of September 26, 1927, covering property described as follows:

232 In Friendship Township, adjoining the lands of ..... beginning at an iron on the northern margin of the pavement of State Highway Route No. 60, said point being about one-half mile of Friendship Station and 50 feet west of Motsinger's line and running thence along the northern margin of the pavement of State Highway Route No. 60, north 55 degrees 07 minutes west 1,239.8 feet to an iron on the northern margin of said pavement and the center of road leading north from the same, said point being a corner in Inman's line, thence along center of said road with Inman's line north 3 degrees 32 minutes east 1,417.09 feet to an iron in the center of said road, corner with Inman's; thence still along center of said road and Inman's line north 2 degrees 55 minutes east 440.12 feet to an iron in center of said road and corner with Inman, then with P. C. Lindley's line south 89 degrees 08 minutes east, 2383.47 feet to an iron P. C. Lindley corner; thence still with Lindley's line south 1 degree 15 minutes west 1427.89 feet to an iron, corner with Lindley, thence, still with Lindley's line south 58 degrees 10 minutes west 1407.85 feet to an iron, corner with Lindley, thence still with Lindley's line south 34 degrees 53 minutes west 435.0 feet to the point of beginning, containing 112.7 feet more or less.

233 WORTH B. BALDWIN, a witness produced on behalf of the defendant, having first been duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Are you an engineer, Mr. Baldwin?

A. Yes, I am.

2. Q. Where are you stationed?

A. I am Chief of Operations at Resident Engineer's office, BTC #10.

3. Q. State your engineering qualifications.

A. Graduate engineer and in charge of construction for the United States engineers in this vicinity.

4. Q. How long have you been in charge of United States engineers?

A. In this vicinity nineteen months.

5. Q. Did you make any measurements at the airport as the airport relates to the property of Thomas L. Causby, with Lieut. Louis K. Dunagin?

A. I did yesterday morning.

6. Q. With what instruments, or how were those made?

A. The survey was made by use of a transit projecting the alignment of the S. E. runway toward the Causby property and the distances were obtained by the use of a steel chain, measuring from the end of the paved runway, keeping in alignment of the instrument, the instrument sighting the line for the measures to go down so it would not be waggly and project up to a point where we

234 set a stake 2100 feet from the end of the paved portion of the runway and at that point the transit was set upon the stake and horizontal angles were turned off the angle of the runway to locate the house, barn and the trees, and the distances from this stake along this angle to the three objects was measured with a chain.

7. Q. I hand you what has been marked Defendant's Exhibit No. 6, as identified by the witness Louis K. Dunagin, and ask you to examine that and state whether or not that plat and the figures shown thereon accurately represent the measurements which were made by you and Lieut. Dunagin on May 25? A. They are correct.

CROSS-EXAMINED FOR PLAINTIFF

8. Q. You are a civilian engineer?

A. That is right.

9. Q. But you are employed by the United States Government?

A. That is right.

10. Q. And have been for nineteen months?

A. Two years.

11. Q. Can you by reference to this map and by your computation give me the distance, first, from the end of the S. E. runway to the highway known as route 421, and also the distance from Causby residence to the highway known as 421?

A. From this plan, no, sir.

12. Q. Isn't it scaled?

A. You stated from the highway.

13. Q. The highway is on there, isn't it?

235 A. No, sir, there is no highway on there. That is the projection of the runway.

14. Q. Then you did not get that measurement?

A. There is no horizontal shown from highway 421 to either the end of the runway or to the Causby residence.

15. Q. You made observation of the highway and runway?

A. No, sir, there is no reason why I should.

16. Q. You did not actually measure all this distance for 2275 by a chain, did you?

A. Yes, I did.

17. Q. Did you go on a straight line with it or have to use a transit part of the time?

A. I used a transit for alignment, to project in a straight line and the measurements were made in 100 foot intervals on the sighted line projected to a transit.

18. Q. Let me get a layman's view of it. I am not an engineer. Do I understand that you measured the distances just as one could have walked from the end of the runway direct to the Causby property?

A. Yes, if you could walk in a direct line with no variation, that is the way it was measured.

By the COMMISSIONER:

19. Q. What you did, as a matter of fact, was to fix the transit and put a stake and go to a stake?

A. No, the way it is done, Your Honor, you set up your instrument on your true line in the direction you are going. Your chairmen and rodmen proceed ahead of you.

236 The instrument sights on what we call range bows, to show that they set on that horizontal line, and as they go forward the instrument man sees they stay on that line, because if they would vary that would naturally make the distance longer.

By Mr. COMER:

20. Q. How long was your chain?

A. 100 feet.

21. Q. Did you actually count those 100 feet, or did somebody else count the 100 foot length?

A. By a competent survey party by the use of pins.

22. Q. Did you do it or did somebody else do it?

A. I did not, but again, can I qualify it?

23. Q. Not unless you want to explain it.

A. I checked the distance in this way. By the use of stadia, a transit can be used and stadia to sight upon an elevation rod and give you correct distances. The distance that we measured by chain was checked by me through the instrument, and it checked with the measured distance, therefore that is a double check of the distance.

24. Q. Which are you relying upon, the number of chains multiplied by 100, or by your calculation through the instrument?

A. The number of chains multiplied by 100.

25. Q. And you did not make those?

A. No, sir, but I can qualify that.

26. Q. I did not ask for any qualification. That is all.

237 REDIRECT EXAMINATION FOR DEFENDANT.

27. Q. Who else was with you at the time this survey was made?

A. Lieut. Dunagin was going along with us. I would like to explain the method by which the chain is kept in place.

Mr. COMER. I object. That is argument.

A. (Continued) What I would like to say is how we kept up with distance so there cannot be an error in your measured distance. You use pins and one pin is put down for every 100 feet. A tackman takes them up and counts them, therefore you keep a correct tally. It is not carried in your head but by the number of pins.

28. Q. Is that the usual and customary method of computing distance in surveys?

A. Yes, it is.

RE-CROSS-EXAMINATION FOR PLAINTIFF

29. Q. It is barely possible for that man in computing distance to miss one?

A. No, sir.

WALTER F. WILLIAMS, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1.-Q. Where do you live?

238 A. Wake Forest, North Carolina.

2. Q. What is your occupation or by whom are you employed?

A. By the Division Engineers U. S. Army and Real Estate Project Manager assigned to Raleigh, North Carolina.

3. Q. Does that Raleigh, North Carolina station include all the real estate project management for the War Department located in the Greensboro, North Carolina area?

A. Yes, ma'am.

4. Q. How long have you been so employed?

A. Since December 1942 in that capacity.

5. Q. Prior to that time, what was your position?

A. I was curative agent for the division engineer.

6. Q. Located where?

A. In Oxford, North Carolina.

7. Q. Since you have been occupying your present position with the project manager's office of the real estate branch of the War Department, just what have been your duties?

A. To proceed with acquisition of interest in real estate for the army.

8. Q. Have those duties included acquisition of real estate for the purpose of acquiring airports or clearing flying hazards on airports which have been used by the army?

A. Yes, all army real estate.

9. Q. Which airports have been acquired or extended or flying hazards cleared by the real estate branch?

A. We acquired the real estate for the Winston-
239 Salem, Greensboro-High Point, Raleigh, Durham and Goldsboro airports.

10. Q. Have those duties included the acquisition of land in connection with improvements to the approaches to the runways at the Greensboro-High Point airport which the army is using at this time?

A. Yes, sir.

11. Q. Do all of the directives from the War Department in connection with acquisition of real estate or clearing flying hazards as it relates to airports, come through your hands?

A. Yes.

12. Q. Could any directive have been issued in connection with the acquisition of real estate at the Greensboro-High Point airport or in clearing flying hazards in connection with the Greensboro-High Point airport that would not have come through your office?

A. No.

13. Q. Have you ever received any directive from the War Department to acquire any of the property known in this action as the Thomas L. Causby property?

A. No.

14. Q. Have you ever received any directive from the War Department to procure an easement for the purpose

of clearing flying hazards on the Thomas L. Causby property?

A. No, ma'am.

240 15. Q. Had such a directive ever been issued by the War Department, would that directive have come through your office?

Mr. COMER. We object. That is conditional.

16. Q. I hand you what has been marked as Government's Exhibit No. 2, which is a map of the real estate in and around the Greensboro-High Point airport and ask you if you can designate on that map by code number that portion of the real estate acquired by the United States Government in fee adjoining the airport?

A. Tract 101 J. A. Inman. Tract 102 Stacey Mills. Tract 103 Lindley Nurseries. Tract 201 Lindley Nurseries. Tract 202 Motsinger Brothers.

17. Q. Do I understand that tracts 201 and 202, which are marked by a heavy dark line are two tracts acquired in fee by the United States Government which lies between the Causby property known by code No. 2004 on this map and Greensboro-High Point airport?

A. Yes.

18. Q. Has any other property between tracts 201 and 202 shown in the heavy dark lines on this map been acquired by the Government in fee lying between 201 and 202 and the Causby property?

A. No.

19. Q. And you have no directive to acquire either code No. 2001, 2002, 2003, or 2004?

A. No.

241 20. Q. And you have no directive to procure easements on tracts known as 2001 and 2003 which lie between the Causby property and the property which was acquired by the Government?

A. No.

21. Q. Did you ever go to the Causby property and discuss the question of clearance of flying hazards with the Causbys?

A. I went to the Causby house on two occasions.

22. Q. What was the purpose of those visits to the Causby property?

A. To obtain a right of entry.

23. Q. What was the purpose of procuring of the right of entry?

A. We wanted the right to go upon the property to determine whether or not it would be necessary to clear any flying hazards or whether or not there were any flying hazards on the property.

24. Q. And that right of entry was not procured from the Causbys?

A. No.

25. Q. And no effort at clearance of flying hazards was made on the property?

A. No.

26. Q. According to that directive on the airport property, had the Government acquired all the property
242 necessary lying between the limits of the Greensboro-High Point airport and the Causby property which it was necessary for it to acquire to stay within the CAA limit of 30 to 1 glide angle?

A. As far as real estate directive, they had.

27. Q. At the time the visits were made to the Causby property, who went with you?

A. Mr. Satterfield.

28. Q. You and Mr. Satterfield were together during all the conversations with the Causbys?

A. Yes.

29. Q. Did you at any time tell them the property would be acquired or taken over by the Government?

A. No.

30. Q. Did you at any time tell them that they were in a dangerous position from the standpoint of the operation of the airport?

A. No.

CROSS-EXAMINED FOR PLAINTIFF

31. Q. You did tell them, either you or Mr. Satterfield, that the trees would have to come down?

A. No, sir.

32. Q. What was the purpose in trying to get an easement or right of entry, if you were satisfied with it?

A. I did not say I was satisfied with it.

243 33. Q. You told Miss Fagan that everything that had to be acquired was acquired between the end of the runway and the Causby property, and then you said a little before that that you went there to investigate to see whether any of those flying hazards should come down?

A. No, sir, we did not go to investigate that, we went to get a right of entry for the engineers.

34. Q. Then you were interested in seeing about removing some of them?

A. Yes, we were interested in seeing about it.

35. Q. You were on that property at least twice in a period of two days?

A. Yes, Mr. Causby was not there the first time so I went back to see him.

36. Q. Do you know how many times Mr. Satterfield went when you were not there?

A. No, sir.

37. Q. Do you know that Mr. Satterfield came to my office with reference to obtaining some easement? A. He told me about it.

38. Q. And offered to pay something for it?

A. I don't know.

39. Q. Did he tell you that?

A. No.

40. Q. When you cut trees, you do pay for them?

A. Yes.

244 41. Q. How much did you pay Mr. Coble for letting you cut the trees?

Miss FAGAN. I object as being improper cross examination.

The COMMISSIONER. If it is in the vicinity of this property it may become competent in view of the fact that the plaintiff has taken the position that this property has legally been taken and he has a right to offer some evidence to show the value of it.

By Mr. COMER:

42. Q. You know where the dairy barn is on the Coble property?

A. Yes, it is on another runway.

43. Q. Aren't they almost in a straight line?

A. You mean is it parallel?

44. Q. Is it in the vicinity?

A. It is on the end of another runway.

45. Q. And it is further away from the end of the runway than the Causby property at least by a thousand feet?

A. I don't know.

46. Q. Can you tell by your map? Look at this map and locate if you can the runway leading over the barn of the Coble property.

Miss FAGAN. We object, as being not proper cross examination and as going into a matter not brought out on direct examination.

The COMMISSIONER: The objection is OVERRULED.

245 47. Q. Do you see the runway there?

A. Yes, I know the runway.

48. Q. Which runway goes to the Coble property?

A. This is the United States highway, and this one goes to the Coble property (indicating on map).

49. Q. Which is the Causby runway?

A. This is the Causby runway.

50. Q. The runway which leads toward the Coble property is considerably longer than the runway leading to the Causby property, according to that map?

A. Yes.

51. Q. Do you know exactly where the Coble property is with respect to the end of the runway? You have seen it?

A. Yes, sir.

52. Q. I ask you if it is not at least half again further or one-third further than it is to the Causby property?

A. I don't know.

53. Q. It is further, isn't it? I mean from the end of the runway?

A. From the end of the runway to the Coble land, it looks a little further, yes.

54. Q. I will ask you if you did not negotiate with Mr. Coble, whose property is a good deal further away than the Causby property, for a right or a privilege to cut his trees?

Miss FAGAN. Objection. This is matter not covered on direct examination.

The COMMISSIONER. The objection is SUSTAINED.

246 55. Q. Did you consider cutting the Causby trees?

A. No, sir.

56. Q. Didn't you talk to him about the trees having to come down?

A. To the best of my recollection the only thing mentioned in that connection was that if anything had to be done, the most that would have to be done would be to cut a tree or two, but we did not at any time tell him any trees were going to be cut.

57. Q. But you or Mr. Satterfield negotiated with him as to what the Government would pay?

A. I did not.

58. Q. Will you say Mr. Satterfield did not in your presence?

A. He did not in my presence.

59. Q. When you say you did at least tell him the most that would have to be done would be some trees to be cut?

A. I said the most that would be done if anything would be done would be some trees.

60. Q. Will you say now that no negotiations were made with Causby with reference to paying him for some easements, through your department?

A. Not that I know of.

61. Q. Don't you know what happens through your department?

A. I keep up with it pretty well.

62. Q. I believe you did say you knew about your assistant coming to my office?

247 A. He told me he saw Mr. Causby's attorney.

63. Q. Did he tell you who it was?

A. He might have, but I don't remember if as being Mr. Comer until I got your letter. I knew that later.

64. Q. Did I not write you about it?

A. Yes, you wrote me and I answered.

65. Q. I will ask you if Mr. Causby did not tell you and Mr. Satterfield at the time that he would not agree to cut any trees because they were the only protection he did have, and that he thought you ought to take the whole property did he make that statement?

A. I don't remember whether he made that statement or not.

66. Q. Did he make some statement tantamount to that?

A. I know he was complaining about the fact that the army was out there on the airfield.

67. Q. He refused to let anything be cut?

A. Yes, sir. He refused to give the right of entry. I did not go into what would be cut or anything about it.

68. Q. With reference to the end of the runway and the property which you acquired, you acquired the Motsinger property and the Lindley property, and there were some buildings on that?

A. Yes, sir.

69. Q. And they were removed?

A. Yes.

248 70. Q. And trees were removed?

A. On the Lindley property.

71. Q. You told Miss Fagan that you had no directive to acquire any between that and the Causby property?

A. Yes.

72. Q. There were no trees or houses on the property between Motsinger and Lindley and the Causby property, there were no trees or obstructions?

A. My recollection is there were trees there.

73. Q. You think there are trees now?

A. That is my recollection.

74. Q. Are they bushes or trees?

A. They might be bushes.

75. Q. Don't you know there was nothing, and that is the reason you did not acquire it?

A. We obtained the right of entry. We did not acquire any land outside of those five tracts.

76. Q. I believe you recall that there is nothing between the property you acquired and the Causby property, no trees and no houses?

A. I do not think there are, but we got a right of entry from those people as well as all the others.

77. Q. What do you mean by right of entry?

A. A sort of exploration permit, survey and explore.

78. Q. You have already done that?

A. I just got the permits, I don't know.

79. Q. The engineers have done that?

249 A. I guess they have.

80. Q. That right is over?

A. Yes, sir.

81. Q. What you wanted from Mr. Causby was an easement?

A. No, sir.

82. Q. Didn't you talk to him about an easement?

A. We asked Mr. Causby for right of entry at the time I visited him. That is the only thing I have ever asked him.

83. Q. You don't cut trees under right of entry?

A. I don't know.

84. Q. Don't you know that a right of entry would not give you the right to cut trees; you are an attorney too, aren't you?

A. Yes. It might.

J. P. MOLEN, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

250 1. Q. Where do you live?

A. I live in Greensboro.

2. Q. How long have you been a resident of Greensboro?

A. Since April 1928.

3. Q. What is your occupation at the present time?

A. I am Meteorologist in charge of the airport's weather station at the Greensboro-High Point air station.

4. Q. How long have you been meteorologist at the Greensboro-High Point airport?

A. I opened the station May 1, 1928.

5. Q. Has that station been operating continuously since that time?

A. Yes, it has.

6. Q. Has there ever been a period of time since you opened the station in 1928 up to the present time that that airport has not been in actual operation?

A. The weather station has been in continuous operation. The airport has been always an airport. Operations may have been suspended for short periods during repairs at the field.

7. Q. How long have those periods extended?

A. For local operations I doubt more than a week or two. I have not the exact knowledge on that.

8. Q. Just for short construction periods?

A. That is right.

9. Q. So, with the exception of those short construction periods for a week or two for local operations, the airport has been in continuous operation since May 1, 1928
251 up to and including the present?

A. It was opened before that.

10. Q. It was open when you went there?

A. Yes, ma'am.

11. Q. But you can say of your personal knowledge it has been continuously operating since May 1928?

A. Yes, I can.

CROSS-EXAMINED FOR PLAINTIFF

12. Q. I believe there was a time or two when they stopped the mail so improvements could be made?

A. That is right.

13. Q. It took some time to do that?

A. I don't recall how long, but even though the mail planes were not operating, there were some local planes.

14. Q. Then you mean some type of plane had been landing there with the exception of a few weeks?

A. That is right.

15. Q. It was several months that no mail came there at one time?

A. Yes, I think it was for several months.

16. Q. In other words, there have been at least three different periods of either extension of the runways or improvements in the field?

A. Two or three.

17. Q. Including what the Government did about two years ago, there have been about three?

252 A. I don't recall for sure, two or three.

18. Q. You do recall that it will be two years in July when the engineers went in there and extended the dirt runways, don't you?

A. Yes.

19. Q. Cleared off and acquired some land?

A. Yes, I know when they extended the runways but that did not stop operation.

20. Q. I did not mean that, but including those changes there have been about three different periods of improvement?

A. That is right.

Mrs. MAY STANLEY, a witness produced on behalf of the defendant, having been first duly sworn by said commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Where do you live?

A. 2009 Dellwood Drive, Greensboro.

2. Q. How long have your been a resident of Greensboro?

A. December 1928.

3. Q. What is your occupation at the present time?

A. Business manager of the airport.

4. Q. How long have you been such business manager?

A. Two years this July 1st.

5. Q. Prior to that time did you have any connection with the airport?

253 A. I was with the flying school approximately three years.

6. Q. The flying school was operating at the Greensboro airport?

A. That is right.

7. Q. So you have been connected with the airport for the past five-year period?

A. I think I was at home about two years and then went back.

8. Q. During what period did the flying school operate?

A. I know I was there 1939 and 1940, and I don't know just how long it was, because I do not have a record of that.

9. Q. What are your duties as airport manager?

A. There are lots of details, to take care of the business part of it as well as the offices and buildings and employees.

10. Q. Do all business records and transactions pertaining to the management go through your office?

A. Yes.

11. Q. Do all the operations and checks of the operations with the tower and control office go through your office?

A. It does not go through but I have access to the records if I care to do so.

12. Q. In regard to the use by the army of the airport, does the army have any control of the business management of the airport?

254 A. No.

13. Q. In regard to the use by the navy at the airport, does the navy have any control of the business management at the airport?

A. No.

14. Q. In regard to the use by the army at the airport

does the army have any control over the administration office at the airport grounds?

A. No.

15. Q. In regard to the use by the army at the airport does the army have any control over the hangars on the airport grounds other than the army hangars?

A. No, it does not.

16. Q. In regard to the use of the runway is the field itself used by the army exclusively?

A. No, it is not.

Mr. COMER. We will admit that.

17. Q. Who else uses the field?

A. The army and navy and civilians.

18. Q. Any commercial airlines?

A. Yes, the Eastern Airline.

19. Q. Do you have any data which would show the percentage of time the field is used for takeoffs and landings by the army, navy, civilian and commercial planes?

Mr. COMER. I object, unless the witness made the records.

255 The COMMISSIONER. Or it was made under her direction and supervision.

20. Q. How are the records in the takeoff and landings on the field made?

A. The records on the fields, so far as the landings go now, they come through tower operations, or CAA.

21. Q. Have you made any records with the tower of the takeoff and landings from the daily records they have made?

A. Yes, ma'am.

Mr. COMER. We object.

22. Q. From the records made from the tower, are those made from daily records?

A. They are.

23. Q. Have you computed with the tower officials any memorandum of the records yourself from the daily records that have been made?

A. I have.

24. Q. Are those records made a part of the permanent records of your office?

A. They are.

25. Q. Are the computations which you have made, made from the daily records which are a permanent part of your office?

A. They are.

The COMMISSIONER. I am inclined to think if they are records made permanent records of her office, the
256 permanent records would be the best evidence, and if they were in evidence the computation would be all right as a memorandum of what the records show, but under objection I do not see how you will get out of bringing the original records. If there is any insuperable reason that cannot be done, let us hear that. Ordinarily I would admit it, but there is objection and the best evidence is the records. I have to recognize objections.

26. Q. How about the airport or the weather station at the airport. Is that operated under the control of the army, the one weather station that has been there since you went to the airport?

A. We have two, one under the control of the army and one that Mr. Molen has control of.

27. Q. That is not under the control of the army?

A. No.

28. Q. Is the tower at the end of the airport under control of the army?

A. No.

29. Q. Who has control of that?

A. Mr. Harry Threckel, CAA Airport Authority.

30. Q. Are any of the employees employed in the management and operation of the field other than army personnel—those who are employed for the maintenance of the runways for the maintenance and operation of the field—are any employees employed by or controlled by the army?

257 A. No.

31. Q. Those are all employed and paid by the

municipal airport authority?

A. That is correct.

32. Q. And are paid by them?

A. That is correct.

33. Q. How long have the Eastern Airlines been coming into that airport?

A. I do not know, they were there when I came there.

34. Q. How long has the flying school been there?

A. It started to operating before I went there. It was a very small school. I was there almost three years myself, 1938, 1939 and part of 1940.

35. Q. Of what activities did that flying school consist?

A. Instructing students to fly. They had eight trainers.

36. Q. Can you give any rough estimate of the number of times those planes were in the air?

The COMMISSIONER. I assume that this line of testimony is deemed pertinent on the theory that the flying area was in operation at the time these people bought and went there. Under that theory it might be competent, but otherwise I cannot see what bearing it has.

A. The flying school would have ten in a class and to begin with they could only fly half an hour a day, each ten. Of course at the end of the program they could get an hour each day.

258 37. Q. Do you have under your control any accident record of the airport—do you keep an accident record of the accidents that have taken place, in your capacity as business manager?

A. I do.

38. Q. Can you give us a statement of what accidents have taken place at the airport during the last three year period?

A. There has been one accident, coming in, but never an accident that ever left the field, and we have never had a fatal accident on the field.

39. Q. What accident do you refer to as coming in?

A. A navy plane which crashed over the Lindley nursery.

40. Q. Where is that on the field in relation to the Causby property?

A. It would be west.

41. Q. About how many miles?

A. I don't know, because I don't know distances.

42. Q. Has this Greensboro Municipal Airport been designated as a CAA licensed airport?

A. It has.

43. Q. Do you have that designation with you?

A. I do.

44. Q. Is that the original designation that has been forwarded to the airport office by the CAA?

A. Yes, ma'am.

259 45. Q. How long, according to your records, has the Greensboro-High Point Airport been designated by the CAA as an official airport?

A. From the beginning, because they cannot operate otherwise.

46. Q. Since 1928?

A. That is right.

47. Q. And is so designated at the present time?

A. It is.

48. Q. I hand you what has been marked Defendant's Exhibit No. 7 for identification, and ask you if that is the designation of the Greensboro-High Point airport as an approved airport?

A. Yes, it is.

Defendant offers in evidence designation of Greensboro-High Point Airport by CAA as an approved airport. Marked as Defendant's Exhibit No. 7.

Miss Egan. I would like to ask permission to withdraw that exhibit, and to substitute a certified copy of it at a later date from a photostatic copy.

The Commissioner. That is all right.

49. Q. Are you familiar with the residential area surrounding the airport?

A. Fairly so.

50. Q. You have driven back and forth to work?
260 A. Yes, I have.

51. Q. How many times a day do you drive back and forth past the residential district?

A. As a rule I go out in the morning and back in the evening and occasionally I drive on the airport.

52. Q. For how long a period of time has that been happening? A. Two years this July.

53. Q. Do you know and do you go on the road west of the airport in the residential district?

A. Yes, I do on an average perhaps once a month.

54. Q. Do you know of your own personal knowledge from your acquaintance with the vicinity approximately where the houses surrounding the airport are located?
A. Yes, I do.

55. Q. Do you know of your personal knowledge whether or not there are any uninhabited houses in the vicinity of the airport at the present time?

A. Not one. There are too many people wanting them.

56. Q. Do you know whether there are any available at this time?

A. No.

CROSS-EXAMINED FOR PLAINTIFF

57. Q. Miss Fagan asked you about the school conducted there prior to July 1942. That school did not use Flying Fortresses?

A. No, small planes is all.

261 58. Q. Prior to the time the army took over the airport and acquired property there and extended the runways, about the only large planes that came in there were the mail planes, and they were just two motored planes?

A. That is right.

59. Q. She asked you whether other people used the airport. Have you ever known anybody to fly a bomber in except the army and navy?

A. No.

60. Q. Aren't all the large planes, such as large and

medium and heavy bombers that use that field either army or navy planes?

A. We have some planes larger than medium bombers that come in. They are owned privately. Perhaps they carry twenty or thirty people.

61. Q. Did you have those prior to two years ago?

A. Yes, many prior to two years ago.

62. Q. Do you have mail planes?

A. Yes, two a day and two at night.

63. Two engined planes?

A. That is right.

64. Q. How do they compare in size?

A. The mail plane is larger than some of the medium bombers.

65. Q. She asked you about the accidents. The accident of the navy plane was the accident near the runway where four people were killed?

262 A. No, that is not the one.

66. Q. Do you recall the accident that four people were killed?

A. I do.

67. Q. You did not tell about that?

A. She did not ask me that. That plane was not PX into the airport. It did not leave and was not supposed to land there.

68. Q. It fell within two miles?

A. I would say three or four miles.

69. Q. And killed four people?

A. That is right.

70. Q. Wasn't that a navy plane?

A. Yes, it was a navy plane.

71. Q. Where did the other navy plane come in?

A. That was coming into the field. The other plane was not coming in.

72. Q. Was anyone hurt?

A. Yes, the pilot was killed.

73. Q. When was that?

A. Last winter I think.

74. Q. Do you recall about six months ago a plane tak-

ing off on the runway leading to the Causby property that did not rise and had to be pulled out with a tractor do you remember that?

A. Yes.

75. Q. That happened about halfway between the end of the runway and the Causby property?

263 A. No, I would not say so. It was just right off the road, just a little piece off the road.

76. Q. It went over most of the highway?

A. It was quite a distance from the highway.

77. Q. How far?

A. Further than the back of the room.

78. Q. That was pulled out with a tractor?

A. It was.

79. Q. You classified that as an accident?

A. No, it is a minor accident, but I do not classify that as a major accident.

80. Q. But it was an accident?

A. Surely it was an accident.

81. Q. It was an accident to a layman?

A. They do not classify that as an accident.

82. Q. A great crowd gathered?

A. Yes, but that was spectators.

83. Q. They do not gather around on an ordinary landing?

A. Yes, if we let them come. We enjoy having them.

84. Q. You do recall during May 1942 when the dirt portion was smoothed and grassed and seeded? A. Yes.

85. Q. That was done through orders of the army engineers? A. Yes.

86. Q. And done by the army?

A. Yes, sir.

87. Q. You are now employed by the War Department?

264 A. No, the Airport Authority.

88. Q. Miss Fagan asked you about the weather station there. As I understand it, there is one kept up by the Airport Authority and one by the army?

A. That is right. The Weather Bureau is run by the

United States Government, we do not have supervision over the United States Government Bureau.

89. Q. Aren't there two different set-ups for that?

A. Yes, the army has a weather bureau.

90. Q. Does the Airport Authority have one?

A. It is supervised by the United States Government which is for the airport.

91. Q. And the army has one?

A. Yes, sir.

By the COMMISSIONER:

92. Q. And the Government has a separate one?

A. Yes, sir.

By Mr. COMER:

93. Q. The army did not have one prior to May 1942?

A. No, they have a separate one.

94. Q. About two years ago?

A. Not quite that long.

95. Q. They put that in about the time they acquired the property and extended the runways?

A. I don't believe the weather bureau of the army has been in more than four months. I believe it has been completed and in operation about four months.

265 96. Q. Is there any correlation between the two?

A. Not that I know of.

97. Q. Does a plane, for example a mail plane, that wants to land there, that is designated to land there, does that record go through the control tower?

A. Yes, sir.

98. Q. Does the army have knowledge of every plane that lands there?

A. They should, but I don't know their set-up.

99. Q. It lands with the army permission?

A. No, CAA permission. The entire field is supervised by the CAA.

100. Q. The army does have knowledge of any plane landing?

A. I would not know. I don't know the army opera-

tions. I have been in there many times but I do not ask them how they operate.

101. Q. You do not know whether the army authorities have knowledge of all planes that come in?

A. I think they do, but I do not know whether they write it in their records other than their military ships, because I do not know how they keep their records. I do know that no ship can land unless it is recorded in the tower control, and of course we record all ships. The army flies under supervision of the CAA and they follow rules and regulations of the CAA.

102. Q. All that come in and go out must be under supervision of Civil Aeronautics?

A. Yes.

266 103. Q. That is one of the governmental agencies?

A. That is exactly right.

By the COMMISSIONER:

104. Q. That is controlled by the CAA of the United States Government?

A. That is right, and of course they all must be licensed and pass test or work in the Civil Aeronautics.

105. Q. Of the Federal Government?

A. Yes, sir.

CEASAR CONE, II, a witness produced on behalf of the defendant, having been first duly sworn by said Commissioner, was examined, and in answer to interrogatories testified as follows:

1. Q. Please give us your residence.

A. Greensboro.

2. Q. How long have you been a resident of Greensboro?

A. All my life, thirty-six years.

3. Q. Do you have any official connection with the Greensboro Municipal Airport Authority?

A. I am secretary of the Greensboro-High Point Airport Authority.

4. Q. When was that Airport Authority organized?

A. That Airport Authority was organized the enabling act setting up the Airport Authority was passed by the legislature of North Carolina in 1941. The Authority was activated in April 1942.

267 5. Q. And you have been secretary of that Airport Authority since that date?

A. I have.

6. Q. And are so acting at the present time?

A. I am.

7. Q. Do you know of your own personal knowledge when the first date of the establishment of the airport at the present site of the Greensboro Municipal Airport Authority was installed?

A. I do not.

8. Q. When is your first knowledge of there being an Airport at the present site of the Airport Authority landing field?

A. I do not recall the date of my first knowledge that there was a landing field there. I flew from that particular site in the Spring of 1928.

9. Q. Was there a landing area there at that time?

A. There was.

10. Q. What buildings were erected and located there at that time?

A. There was a wooden hangar which is still located there. There was a small administration building, wooden, which is now a part of the brick administration building that is there now.

11. Q. Since 1928 can you state of your own personal knowledge whether or not there has been an airport in constant operation at that same site?

A. I could not state that there had been. I was
268 away from Greensboro from 1930 until 1937.

12. Q. Since 1937 can you state of your own personal knowledge whether or not there has been an airport in operation at that site?

A. There has been. I might add that I had been in

and out of Greensboro from 1930 to 1937 and flown in and out, but I could not say that the airport from my own personal knowledge was in existence all that period.

13. Q. From 1930 to 1937 have you used the airport?

A. I have.

14. Q. Have you used the airport from 1937 up to the present time?

A. I have.

15. Q. Are you familiar with the extensions that have been placed on the runways during the last two year period?

A. I am.

16. Q. Do you know under what arrangements those extensions or clearances or approaches to the runways were placed at the end of the runways?

A. I do not.

17. Q. Do you know whether or not a written instrument or a lease agreement has ever been executed between the Greensboro-High Point Airport Authority and the United States of America?

A. I do.

18. Q. Do you have an original or a signed copy of that lease in your possession as secretary of the Greensboro-High Point Airport Authority?

369 A. I do.

19. Q. Can you produce it?

A. (Witness produces paper.)

20. Q. I hand you a paper which the reporter has marked Defendant's Exhibit No. 5, and ask you if that is a copy of lease executed between the Greensboro-High Point Airport Authority and the army of the United States?

A. It is.

Defendant offers in evidence paperwriting; being copy of lease executed between Greensboro-High Point Airport Authority and the United States Army, which is received in evidence and marked as Defendant's Exhibit No. 5.

Miss FAGAN. We would like to substitute this copy for the one which was marked at the hearing this morning.

The COMMISSIONER. That may be done.

21. Q. Have any supplements been made to the original agreement, Defendant's Exhibit No. 5?

A. Yes, there have been.

22. Q. Do you have those supplemental agreements in your possession as secretary of the Greensboro-High Point Airport Authority?

A. I have.

23. Q. I hand you what the reporter has marked as Defendant's Exhibit No. 8, and ask you if that is the supplement to the original agreement executed between the Greensboro-High Point Airport Authority and the United States Government?

270 A. It is.

24. Q. I hand you Defendant's Exhibit No. 9, and ask you if that is the second supplement to the original lease identified by you?

A. It is.

Defendant offers in evidence the following: Supplement between Greensboro-High Point Airport Authority and the United States Government to original lease between said parties, marked as: Defendant's Exhibit No. 8.

Second supplement to original lease marked as: Defendant's Exhibit No. 9.

Miss EAGAN. We would like to have permission to withdraw and substitute in connection with those two exhibits.

The COMMISSIONER. All right.

25. Q. Are you a frequent visitor to the Greensboro-High Point Airport and have you been within the past two year period?

A. I have.

26. Q. About how often?

A. Probably average two or three times a week.

27. Q. Do you feel that you are thoroughly acquainted with the locality and neighborhood surrounding the Greensboro-High Point Airport Authority?

A. I feel that I am well acquainted with the neighborhood.

28. Q. Could you state of your own personal knowledge whether there are any uninhabited dwellings in the immediate vicinity of the Greensboro-High Point Airport?

271. A. To my knowledge there are none, but I would hesitate to say definitely that there are none. I have not gone in the houses.

29. Q. Do you know of your own personal knowledge whether or not the runways, that is the hard surface portion of the runways, have been extended within the past two year period?

A. Within the last two year period they have not.

30. Q. Have they been extended since the army went into operation of the field?

A. They were in process of being extended when the army went into the field. A WPA project was initiated to extend the runways, I believe it was 1939. That project was in process of completion for a year or two, as a matter of fact it stopped when the WPA went out of existence prior to being fully completed. However, the paved portion of the runways had been completed when the army officially signed this lease with the Airport Authority, but some of the grading and surfacing and turfing and lighting was not completed until after the army lease was signed.

CROSS-EXAMINED FOR PLAINTIFF

31. Q. Do you recall how much they were lengthened before the army took over?

A. I do not.

32. Q. Do you know how long they are?

A. I could not be positive. It is possible to get the exact measurements, but I do not have them in my head.

33. Q. The sealed portion or the extension, as it
272 has been called, or dirt portion of it is about five or six hundred feet long?

A. Just which runway?

34. Q. Referring particularly to the one leading toward the Causby property?

A. I do not know where the Causby property is.

35. Q. The one designated as northwest-southeast runway; do you recall the length of that seeded portion, the smooth dirt portion of the runway?

A. Beyond the paved area?

36. Q. That is right.

A. Do you mean southeast or northwest, there are two ends?

37. Q. It is the one coming down the railroad, I mean, the end this way.

A. Southeast?

38. Q. That is right.

A. There was no seeded or turfed area beyond the paved runway area which went up to the limit of the Airport Authority property.

39. Q. You do not mean it is not seeded now?

A. What do you mean?

40. Q. I mean smooth and graded and grassed and smoothed as a part of the runway, the dirt portion?

A. That was a project that smoothed out, as you say, some land beyond the Airport Authority property.

41. Q. The approaches to the runway?.

273 A. That is correct.

42. Q. Isn't that about 600 feet long?

A. I don't know. That area goes to the boundary of the road to Guilford College. I don't know how long that is from the limit of the Airport Authority property.

43. Q. Prior to 1941 or 1942, most of the planes that used that airfield were small planes?

A. It all depends on what you mean by small planes.

44. Q. I mean as compared with Flying Fortresses or these large bombers.

A. I do not believe I can answer that question the way you put it. I have not record of the number of planes. You say most of the planes. There are a lot of small planes owned out there.

45. Q. Did you ever see any bombers there prior to 1941?

A. Yes, sir.

46. Q. What date?

A. I cannot recall. The airport has been a public airport and of course has been used by the army or navy I would say ever since the airport was opened.

47. Q. Isn't it a fact that this heavy traffic of navy planes and army planes has been since the present war?

A. Yes, absolutely.

274 REDIRECT EXAMINATION FOR DEFENDANT

48. Q. As a matter of practical operation, in the operation of the airport pursuant to this lease, has exclusive right to the use of the airport been given to the army?

Plaintiff objects. Overruled.

A. Exclusive use of the airport has not been granted to the army.

49. Q. By what other parties is the airport used?

A. The Airport Authority at the present time has leases outstanding with the Weather Bureau for quarters in the Administration Building; with the Civil Aeronautics Administration for quarters in the Administration Building; with the Eastern Airlines for use of the runways, and facilities in the Administration Building. The Airport Authority operates its own hangars, two, and leases hangar space to private citizens for storage of their own private planes, who in turn use the airport runways.

RE-CROSS-EXAMINATION FOR PLAINTIFF

50. Q. The Civil Aeronautics Authority is a Federal Agency?

A. It is. It is part of the Department of Commerce.

275 BYRD I. SATTERFIELD, a witness produced on behalf of defendant, having been previously sworn and having testified, was recalled for further examination, and in answer to interrogatories testified as follows:

1. Q. I understand that you are connected with the Project Office of the Real Estate Branch of the War De-

partment, according to the former testimony given here—is that correct?

A. It is.

2. Q. During the last two year period I believe you testified you had been on all the property adjoining the airport, pertaining to title to lands adjoining the airport?

A. Since May 1943.

3. Q. About how frequently have you been in and around the airport during that period of time?

A. During the month of May, June and July, and possibly some in August of 1943 I visited the areas immediately around the airport quite frequently.

4. Q. In the survey which you made, did you observe any uninhabited dwellings on any of the property which you inspected for that purpose?

A. I did not.

5. Q. Have you observed any uninhabited dwellings since that date in the inspection which you made?

A. I did not.

6. Q. Were there any uninhabited dwellings in the inspection you made in the area immediately sur-
276 rounding the airport, would you have noticed it?

Plaintiff objects.

A. I might state I did not make a survey, but I did not see any that were not inhabited.

CROSS-EXAMINED FOR PLAINTIFF

7. Q. Mr. Causby's house was vacant for about two months?

A. I stated I visited the premises last summer. I was informed that Mr. Causby moved from the premises and then decided to move back.

8. Q. He was away about two months?

A. I don't know that. I do know he is living there now.

Miss Evans. That is all we care to put in at this time.

Defendant closes.

REBUTTAL EVIDENCE FOR PLAINTIFF

Mr. COMER. The plaintiff desires to offer in evidence a map or blueprint made by C. O. Lowe, registered engineer, May 3, 1944, showing the distances from northwest southeast runway, Greensboro-High Point Airport, to the T. L. Causby residence.

277 The defendant waives identification of this map by Mr. Lowe and admits that if he were present he would testify that this is the map made by C. O. Lowe, a registered engineer.

278 ROY S. DEARSTYNE, a witness on behalf of the defendant, having first been duly sworn by said commissioner, was examined, and in answer to interrogatories propounded by Miss Fagan, testified as follows:

1. Q. Please give your name to the reporter.
A. Roy S. Dearstyne.
2. Q. What is your residence?
A. Raleigh.
3. Q. Your occupation, please.
A. I am head of the Poultry Department at the North Carolina State College located at Raleigh, N. C.
4. Q. How long have you been head of the Poultry Department at North Carolina State College?
A. Fifteen years, seven years prior to that I was connected with the Department as research man.
5. Q. What is your capacity at the present time?
A. Head of the department.
6. Q. Does the North Carolina State College run any experimental farm?
A. We have three poultry farms and one experimental turkey farm. Our mountain station is at Candler, the coastal experiment station at Willard, and our central plant and turkey research plant at Raleigh.
7. Q. As head of the Department, do you have
279 supervision of those experimental farms?
A. Yes, sir.

8. Q. What other work in regard to poultry does your department handle, aside from experimental farms?

A. We might be what is termed a clearing house for information. We answer in the neighborhood of three thousand letters a year and have about a thousand people come in for conference and do between two and three thousand autopsies on chickens.

9. Q. All of that is handled under your supervision as head of the Department?

A. That is right.

10. Q. On these experimental farms, about what poultry do you have located at those particular farms?

A. At Candler we raise in the neighborhood of 1500 chicks and carry about 750 layers. At Willard we carry about 1000 chicks and between three and four hundred layers. At the central plant, between three and four thousand chicks each year and carry about 1500 layers, and at our turkey farm we carry about 800 poults and about 300 layers.

11. Q. Has any extensive research work been done on the question of frights to poultry?

A. To my knowledge there has not ever been any control work done whatever.

280 12. Q. At these experimental farms do planes fly over these experimental chicken farms that belong to the State College?

A. Yes, sir.

13. Q. In all instances?

A. I think in our Raleigh and Willard plant we have about the same number of planes going over, although we do not count them, but at the mountain station not so many.

14. Q. Have you noticed any marked increase in the number of planes in traffic since the war?

A. I would say yes.

15. Q. Have any complaints throughout the State of North Carolina ever been made to the Poultry Department or to the experimental farm caused by frights from airplanes flying over the poultry farm?

Plaintiff objects.

A. We have had no complaints come over our desks from planes flying over the farms.

16. Q. Have you had any complaints through your office caused by any accidents from airplanes to poultry on the poultry farms?

Plaintiff objects. Overruled.

Plaintiff excepts.

A. Yes. I think it was on the seventh of May there was a bomber crashed and exploded on a poultry farm about seven or eight miles from Raleigh at Garner, N. C.

17. Q. Did you assist in the investigation of that accident so far as damage or claimed damage to the poultry was concerned?

281 A. Yes, we were asked to.

18. Q. And you did make such investigation?

A. Yes, sir.

The COMMISSIONER. A general question on that would be competent, but I am not going to try the issue off that accident.

19. Q. How far did this crash or explosion occur from the poultry farm in question?

Plaintiff objects. Overruled for the present.

A. I do not know the actual distance, probably between 200 and 300 yards. It crashed in the woods the other side of a barn as I understand from the owner, there was a large explosion, the plane caught fire. Two boys were killed and the woods burned and the explosion was so severe that the owner claims the foundations on a new building were cracked.

20. Q. Did you make any investigation at that time as to the damage caused by frights to the poultry from the plane?

A. The owner submitted daily records for about three months prior to this accident, and then the last time that I saw the records it was probably six weeks after the accident occurred, and he had his production records before the accident and after the accident.

21. Q. At what period from your investigation there did the production on those poultry resume normal production?

A. That question I want to answer in a plus and
282 minus way. We had to take a normal production curve, that is, the birds will start in heavily, will peak in production February and March, and then a declining production which is related to the intensity of load, weather conditions and other factors. The only basis we could have on that was to continue the sharp curve of production and carry that normal decline, which may have been 10% either way. After the accident we found quite a decline in production for the first week or so, and then the return in production met this plotted curve about six weeks after the accident. That was to the very best of our ability.

22. Q. Would it be possible from your experimental work with poultry or with chickens, to say that a chicken would, caused by fright, throw itself up against the side of a building and burst itself open; would there be any way of determining that that had been caused by fright?

Mr. Comer. I believe I will object to that.

The Commissioner. I will let it come in.

23. Q. Presuming that in response to a question posed by plaintiffs' counsel: "What happened to the chickens you were telling about?" that the answer was: "They would jump off the roost, get excited and jump against the side of the chicken house and the walls and burst themselves open and die. I have known it to be that I have taken out as high as six or ten in one day." From the experimental work you have done with chickens and poultry, would you say it would be possible for that to happen, with the cause to be attributed to fright?

283 Mr. Comer. I object. It is not fair to this witness. The witness does not know how close the planes came, he does not know what kind of wall it was, whether wire or plank, and the main point at issue is that the chickens were killed. I understood him to say that they burst the egg. It was shown that others have seen

him carry away eight or ten of them, and what the Government attorney is trying to do is to negative that evidence by an expert opinion from a man who is not an expert to that extent. That is in the realm of speculation, but the question is unfair to the witness and is clearly incompetent and cannot be shown in that way.

A. We do not do experimental work with chickens on frights, but it is entirely possible that with fright they would fly against a wall very strongly, but I doubt very much that any chickens within a limited space could break themselves open. I think that is a sort of misnomer in there.

24. Q. Would it be possible to determine, if those chickens were found dead, what had been the cause of their death?

A. That would be almost a scientific impossibility, because fright would leave no lesions inside of the chickens that were visible to the naked eye. The only possibility that could be, or only method of approach on that would be sectioning of the brain and spinal cord tissue, embedding it in paraffine and making a very careful examination of the nerve tissues. Fright would leave no lesions
284 whatever. It is not like a disease, no abnormalities you could pick up.

25. Q. Then if those chickens were found dead, do I understand you to say that it would be impossible to attribute the cause of their death to fright, from a casual explanation?

Mr. COMER. We object to that.

Sustained.

26. Q. From your experimental work, would you say that a place lying approximately 2275 feet from an airport was a satisfactory place to locate a chicken farm or poultry farm?

A. We would not recommend it in our department. That is, in other words, when we are recommending for people to establish poultry plants, the most desirable site is to get them as far away from confusion of any kind as possible.

27. Q. Would you say that a chicken farm located close to the highway was an ideal place for a poultry farm?

A. Not as ideal as possible.

28. Q. Would you say that a chicken farm located close to a railroad was an ideal location for a poultry farm?

A. No.

29. Q. Then, say that a chicken farm was located approximately 2250 feet from the airport and the same chicken farm was located adjoining the highway, and that adjoining the highway there is a railroad track, would it be possible for you to attribute any particular portion of annoyance or nuisance from any one particular one of those activities to the reason for the non-establishment of a chicken farm in the proximity of all those factors, assuming in connection with that question that the highway is approximately 400 feet from the property and the railroad lying approximately 600 feet from the property.

285

A. The thought of the question is, are the railroad and highway contributing factors to annoyance of chickens?

30. Q. That is correct.

A. I would think all those factors would enter in, that is if the highway had a large volume of truck traffic, and if trains were running by fairly constant on the railroad. All those things are undesirable.

31. Q. Would it be possible from your experimental work to segregate any one of those factors and say which of those factors was the detrimental factor?

A. I think all are.

32. Q. Would it be possible to segregate it and say that any possible presumed damage was caused by one to the exclusion of the others?

A. This is still a matter of opinion. Let me put it this way. I have never seen this farm.

The COMMISSIONER.

33. Q. The question is, have you ever seen similar situations, and are fairly familiar with similar situations?

A. No, Your Honor, because the whole thing is new.

Mr. COMER: I move that the evidence be stricken out, and I make such motion.

286 CROSS-EXAMINED FOR PLAINTIFFS

By Mr. COMER:

34. Q. Mr. Dearstyne, if the plaintiff or any of his witnesses saw these chickens fly against the wall with a bomber directly overhead, about the treetops, at the time, and saw them hit the wall and fall over and lie down and die, there would not be much question as to what caused them to fly against the wall or what caused them to die?

A. I would not think so.

35. Q. And you said it was entirely possible for a chicken to fly against the wall or solid object with enough force to cause death?

A. Yes, but not to burst them open.

36. Q. Doesn't it sometimes burst the egg?

A. Yes.

37. Q. Does that cause death?

A. An egg broken in the ovary duct will invariably cause death.

38. Q. It would be possible to break eggs of hens laying?

A. That is possible.

39. Q. And that invariably causes death?

A. Yes, an egg broken in the ovary duct.

40. Q. Of course you have never seen this place and are not in position to say that at least 100 hens were killed that way?

A. Oh, no.

287 41. Q. The attorney for the Government was asking you about the highway. If that highway is about 400 feet from the Causby house and the chicken house was back of the Causby house still further from the highway, you do not think that the noise of trucks would be great enough to cause a chicken to fly against a wall with such force as to kill it?

A. I don't know. In chickens we have the same conditions we have in humans. For example, Leghorns have

been inbred so much they are very intense and the variation in individuals is tremendous. I am not in position to answer that.

42. Q. Any confusion or loud noise is detrimental to the chicken business?

A. Oh yes.

43. Q. Whether you are an aviator or not, you have heard and seen planes?

A. Yes.

44. Q. And I believe you know a plane at close range is the loudest noise on earth?

A. I duck when I hear it.

45. Q. It is considered the loudest noise there is?

A. I don't know about that.

46. Q. You know a bomber flying by a chicken house would be calculated to disturb chickens more than a truck four or five hundred feet away?

A. Oh yes.

288 47. Q. Whether the chickens are actually killed or not, the fright caused by any loud noise or confusion would be detrimental to the chicken business?

A. Fright is detrimental.

REDIRECT EXAMINATION FOR DEFENDANT

48. Q. Have any studies been made in the adjustment of poultry to fright, as to how they acclimate themselves to noises or noise conditions?

A. There have been no studies made. It would be impossible to make a study of that type, but I have heard our extension men discuss this question, or our plant men, and they do feel that chickens will adjust themselves to a new environment, so to speak, as far as noise is concerned. Exactly how quick, we do not know.

HENRY A. THRELKELD, a witness produced on behalf of the defendant, having first been duly sworn by said Commissioner, was examined, and in answer to interrogatories by Miss Fagan, testified as follows:

1. Q. Where do you live, Mr. Threlkeld?

A. Greensboro, North Carolina.

2. Q. What is your occupation at the present time?

289 A. I am Chief Airport Traffic Controller at the Greensboro-High Point Airport.

3. Q. How long have you been located there?

A. I have been located at the airport since July 27, 1943.

4. Q. Was there an airport control tower in operation at that airport at the time you went there, or prior to the time you arrived?

A. No, there was not.

5. Q. Then the operation of the tower was commenced at the time you took up your duties at the Greensboro High Point Airport?

A. That is correct.

6. Q. How long have you been engaged in this type of work?

A. Approximately eight years.

7. Q. At what place?

A. I have been in Nashville, Tenn., Jackson, Miss., Bristol, Va., Spartanburg, South Carolina, and here.

8. Q. Would you detail briefly, your duties as Airport Traffic Control Manager at the Greensboro-High Point Airport.

A. My duties are for the administration and operation of the Airport Traffic Control Tower, and all matters of air traffic control come under my jurisdiction in a three mile area of the airport.

9. Q. How many employees at the control tower?

A. At present eight.

290 10. Q. Are all those employees under your supervision and direction?

A. That is correct.

11. Q. By whom are you employed, and the other employees of the tower employed?

A. By the Department of Commerce, under the Civil Aeronautics Authority.

12. Q. Do you have any connection with the Civil Aeronautics Authority at Greensboro?

A. No.

13. Q. Do you have any direct connection with the Army or Navy officials operating out of that airport?

A. No.

14. Q. Will you outline the manner in which the tower operations are conducted for a plane both coming in and going out of the airport, so far as the tower is concerned?

A. An aircraft is due to call the control tower when they are in a fifteen mile radius from the airport, receive landing instructions as to clearance in their traffic pattern, they are given the runway in use at the time, the wind direction, velocity, and advised to call when they are on base leg for landing sequence.

15. Q. Is it possible for a plane to come in and land at that airport without going through and receiving those instructions from the tower?

291 A. Yes, ships with no radios do not receive those instructions. They circle the field and select the runway by observing traffic on the wind-tee, and receive a light signal to land.

16. Q. How about planes taking off from the airport?

A. All planes taking off receive their clearance to the runway in use, wind direction, velocity and other further information.

17. Q. Do you keep complete records at the tower of every plane that lands and takes off from that tower?

A. That is correct.

18. Q. How are those records kept?

A. We do not keep permanent records as far as local flights, such as cubs and some local flights around the airport, but all cross country flights, military or civil, permanent records are kept, with the flight plan, and a flight plan is made on every craft.

19. Q. Are tabulations made up at the end of each day as a matter of business for your files?

A. That is correct.

20. Q. Is a tabulation of those made up at the end of each month as a matter of business of your office?

A. That is correct.

21. Q. Are all those tabulations and compilations made under your direction, control and supervision?

A. Yes.

292 22. Q. What type of planes come into that airport and take off from the airport?

A. You mean between heavy and light aircraft?

23. Q. How do you segregate them as commercial or private craft or military craft?

A. We segregate them as air carriers, military, civil, itinerant, locals.

24. Q. In segregating them in that way, do you make a total for each day's operations?

A. That is correct.

25. Q. And then make a total of each month's operations?

A. That is correct.

26. Q. Do you have any data with you taken from your monthly operations schedule, showing the number of craft coming in and taking off from that airport?

A. I do.

27. Q. For what period of time do you have those statistics covering?

A. Beginning August 1st.

28. Q. That is the date you started with the airport?

A. Yes, sir.

29. Q. Up to the current date?

A. I have up to June 27th.

30. Q. For the month of August, and you can use those figures to refresh your recollection, do you have

293 the total number of craft which have used the Greensboro-High Point Airport?

A. I do.

31. Q. Could you give us that total?

A. It is 4691.

32. Q. In order to get these figures correct, does that

figure 4691 cover landings and takeoff of the same aircraft?

A. That is correct. It is two movements. One landing and one takeoff.

33. Q. Then all these figures would cover two, so they would be divided in half to get the total number of craft on the airport?

A. That is correct.

34. Q. How is that figure 4691 broken down as to the types of craft for the month of August 1943?

A. We have 242 airlines, 1576 military, 289 civil itinerant and 2584 locals.

35. Q. Do you have those same figures for the month of September 1943?

A. September would be 5803 total. 226 air carrier, 1384 service military, 111 civil itinerants, 4082 local.

36. Q. Do you have those same figures for the month of October 1943?

A. I do. Air carriers 256, military 1598, civil itinerant 155, locals 3647, making total of 5651.

37. Q. Do you have those same figures for November 1943?

294 A. November 1943, air carriers 238, military 1750, civil itinerant 162, local 3336, making total of 5486.

38. Q. Now for December 1943.

A. Air carriers 232, military 1542, civil itinerants 147, locals 3892, total 5813.

39. Q. The figures for January 1944.

A. Air carriers 200, military 1647, civil itinerants 149, locals 6220, total 8,216.

40. Q. For February 1944.

A. Air carriers 184, military 1552, civil itinerants 112, locals 854, total 2702.

41. Q. Of those military crafts, Mr. Threlkeld, does that include both army and navy craft that go onto the airport?

A. That is correct.

42. Q. What types of military craft use that airport?

A. We have both fighter, bomber traffic, also I would say we have heavy, medium and lighter aircraft.

43. Q. What proportion of the total military craft which you have given is heavy craft and what proportion is light craft?

A. I would say 10% of our traffic is heavy, 10% of military traffic are heavy bombers, four motored bombers.

44. Q. Then the balance of that traffic is light military traffic?

A. I would say fighter traffic, light military traffic.

45. Q. Then of the total figures that you have
295 given us for the month of November, which I think is the highest figures you gave for military craft, 1750 military craft, would you say that 10% of that was bomber traffic and 90% was fighter or light traffic?

A. That is correct.

46. Q. And that same percentage would hold true for the other months you have given us?

A. Yes, sir.

By the COMMISSIONER:

47. Q. That situation involved half the number as you gave the totals?

A. That is correct, two movements, two operations, one landing and one takeoff.

By Miss FAGAN:

48. Q. So if you had on your December movement 1542 as your figure, then the actual number of military planes which were on that airport would be half of 1542?

A. That is correct.

49. Q. And the same figure would apply all through?

A. Yes.

50. Q. On this runway known as the southeast runway, which runway is that on the airport traffic track?

A. That is runway 14, or it is 142 degree magnetic heading.

51. Q. Is that runway known as the southeast runway?

A. That is correct.

296 52. Q. That is the runway where the path of glide goes over the Causby property?

A. I would not know.

53. Q. Is that the shortest runway on the field?

A. That is the shortest runway on the field.

54. Q. It is the southeast runway?

A. That is correct.

55. Q. Does it run parallel with highway 421?

A. Yes, approximately parallel.

56. Q. What percentage of the time is that runway used for landings and takeoffs?

A. I would say 2% of the time.

57. Q. As an actual practical matter?

A. As an actual practical matter 2% of the time.

58. Q. So on all these figures which you have given for military craft, approximately 2% of the landings and takeoffs, computed on these figures would be over the southeast runway?

A. That is correct.

59. Q. And all the other landings and takeoffs would be on the other runways?

A. That is correct.

60. Q. In regard to night flying, what amount of night flying by military craft is done on the airport?

A. Of all the totals, it would be approximately 1%.

297 61. Q. So if you take the figure 1547 landings and takeoffs of military craft for the month of August, then 1% would be for night flying?

A. That is correct.

62. Q. And the same would hold true for all other figures?

A. That is correct.

63. Q. Taking that same figure for August, 2% of that would be over the southeast runway?

A. That is correct.

64. Q. And the same would hold true for the other figures for other months?

A. Correct.

65. Q. In regard to the actual use of the so-called hard surface portion of the runways, from where you sit in the tower can you see what portions of runways are actually used by craft and landing or taking off?

A. Yes, sir.

Mr. COMER. We object. I do not think he would say that he sees every plane that takes off and lands. I do not see what that has to do with this case.

Overruled. Exception.

66. Q. Do you know as an actual matter of fact what portion of the runways, whether it is the hard surface or asphalt—

Mr. COMER. I will admit for the purpose of the record that it is the purpose to use the concrete part and
298 that a plane is not supposed to go off the runway.

By the COMMISSIONER:

67. Q. As a matter of actual practice, which is used?

A. The hard surface.

By Miss FAGAN:

68. Q. From your experience in the tower over the last seven months' period, have you ever seen or experienced the seeded or turfed approaches to the runways being used for landings or for takeoffs?

A. I have never seen, with but one or two exceptions, where a light or itinerant, some cub not knowing the airport would come in and land just parallel to the runway and 100 or 200 feet from the runway, just one or two exceptions.

69. Q. As a matter of actual practice, those are the only approaches that have been made off the runways?

A. Yes.

70. Q. Do you keep actual records of the accidents on the airport?

A. Yes, I do.

71. Q. During the last eleven months since you have

been in charge, what accidents have taken place on the Greensboro-High Point Airport?

A. We had one accident in the control zone, not on the airport, approximately two and a half miles northeast of the field September 13, 1943. That was a navy plane.

299 72. Q. Within the control zone?

A. That is correct.

73. Q. What other accidents do you have a record of?

A. One private aircraft. That is not military.

74. Q. What do you have for military aircraft?

A. One of the navy Beech craft landed southwest on runway 23 with wheels up. That was October 28, 1943.

75. Q. Have you records of any other accidents that happened at the airport?

A. Army aircraft November 21, 1943.

76. Q. Where was that in relation to the field?

A. It landed to the southwest of runway 23.

77. Q. What other accidents do you have?

A. That is all.

78. Q. Have there been any accidents happened on the southeast runway which runs parallel to highway 421?

A. No, not to my knowledge, or we would have a record. If there is any damage to the aircraft, either minor or major, we make out an accident report and I have not any shown on that runway.

79. Q. There has been some testimony introduced as to an army plane which apparently had some difficulty on the southeast runway. Has an accident record been made on that?

A. No, because the plane was not damaged sufficiently to require an accident report made on it.

300 80. Q. Did you make an investigation of that?

A. I did not personally, but the acting chief controller did.

Plaintiffs object.

81. Q. Who do you mean by the acting chief controller?

A. When the aircraft ran off the runway and over the road there was investigation made.

Plaintiffs object.

82. Q. Would any report that was made go through your office as controller of traffic?

Plaintiffs object.

83. Q. Does any report made have to go through that office under your supervision and under your signature?

A. Yes.

84. Q. And that is a matter of routine?

A. That is correct.

Plaintiffs object.

85. Q. In regard to this navy plane that came into the airport, was that navy plane cleared through your tower?

A. It was not.

86. Q. Had that aircraft been intending to land there or scheduled to land there, as a matter of actual fact, would a clearance have had to be made through the Greensboro tower?

A. We did not have any information or flight plan on the aircraft scheduled to land at the Greensboro Airport.

301 87. Q. Did you make investigation of that accident yourself?

A. Yes.

88. Q. And no flight plan was filed at the Greensboro Airport?

A. That is correct.

89. Q. In regard to all of these tower records and statistics which have been made through the tower, do you operate in the tower yourself?

A. I am scheduled to make two shifts a week.

90. Q. And your other duties consist of what?

A. Administrative duties.

91. Q. Do you make up all the complete records for the airport tower yourself?

A. That is correct.

92. Q. And all of the records on the tower readings which are made are under your supervision and under your direction?

A. That is correct.

93. Q. Are all those records actually checked by you?
A. Yes.
94. Q. And your monthly records are in your possession or under your control?
A. That is correct.
95. Q. Are the records which are made actually signed and verified by you?
A. Yes.
96. Q. That is a part of the duties of your office?
302 A. Yes.

CROSS EXAMINED FOR PLAINTIFFS

By Mr. COMER:

97. Q. Mr. Threlkeld, the plane that Miss Fagan was asking you about that landed on the southeast runway that you said you did not call an accident, failed to take off and had to be pulled in by trucks, didn't it?
A. That was a B-34 Lockheed in taking off to the southeast, evidently the pilot cut his motor and ran just over the road into the ditch.
98. Q. There was such confusion that about 150 people gathered around?
A. I was not there at the time.
The COMMISSIONER. Strike that out, then.
99. Q. You do know that it was pulled in and did not taxi back to the field?
A. That is correct. We had the report that there was not any accident.
100. Q. You did have a report, and if it reaches the dignity of a report it was not an accident?
A. We did not make an accident report on it.
101. Q. What kind of report did you make?
A. There was not sufficient importance to make a report of it.
102. Q. It is not customary for one to go into a
303 ditch, is it? Do you mean to tell this Court it was not an accident?
A. There was not any damage to the aircraft.

103. Q. Will you say it was not an accident, something that was not expected?

A. It was not expected but it was not what we would term a damage to aircraft.

104. Q. Wasn't it an unexpected occurrence?

A. That is true.

105. Q. That is an accident?

A. Yes.

106. Q. That happened between Causby's house and the end of the runway?

A. I do not know where their property is located.

107. Q. It happened right off the southeast runway?

A. That is right.

108. Q. The navy plane you spoke of, don't you know that every plane comes right over the Causby property on that southeast runway and if the Captain here was not in a plane behind him trying to give him instructions do you know that?

A. No.

109. Q. Will you say it did not come over his property?

A. I am not qualified to say it, and he probably would not be qualified to identify the airplane.

110. Q. You are expressing an opinion?

A. Yes.

111. Q. Do you know the Captain was in the air, that sits right here?

304 A. Yes, the Captain was in the air at the time.

112. Q. And he was trying to aid him at the time?

A. No.

113. Q. But he was in the air?

A. He was in the air.

114. Q. That was a fatal accident?

A. Yes, sir.

115. Q. People killed besides the pilot?

A. Five in all.

116. Q. And they were burned to death and the house destroyed?

A. To the best of my knowledge.

117. Q. You are testifying about the number of planes. I believe you testified in one month there were 8215 either went out or came in?

A. That is correct.

118. Q. Analyze that for me and state if that would not be approximately 273 a day or one every five minutes?

A. You can figure that out.

119. Q. Will you take time to analyze it? 8215 in one month. Divide that by thirty roughly, and that makes about 270?

A. That is correct.

120. Q. There are 24 hours in the day. Multiply that by sixty and I believe you get 1440, and if you divide 273 into 1440, see if you do not get five and a fraction?

A. That is about right.

305 121. Q. Then that means that there is a movement of planes of some description in that month either coming in or taking off approximately every five minutes of the day, that is an average of that day and night?

A. That is correct, but——

122. Q. (Interposing) Just answer my question. I believe you said one month there were 4750 military craft, and I believe you testified that only about 5% of the planes that came in would come in or take off at night?

A. That is correct.

123. Q. Do you have any definite figures on that?

A. That is just an estimate of it.

124. Q. It is also largely conjectural that only 2% go on that runway?

A. No, we do not have definite figures.

125. Q. Every time the wind is right, they come in or go out?

A. Yes, owing to the velocity of the wind we use that runway. It is small, and if at all possible we use the other runways.

126. Q. One plane a night coming in and flooding the runway would be enough to wake up a family?

A. I am not competent to say.

127. Q. If it came at two or three o'clock at night, it would be enough to disturb people?

A. It would depend on whether you are used to it.

306 128. Q. If you are not used to it?

A. Yes, sir.

129. Q. So it would not matter whether it was one or twenty so far as disturbing people?

A. I would not say.

REDIRECT EXAMINATION FOR DEFENDANT

By Miss FAGAN:

130. Q. Please get your sheet for the month of January, Mr. Threlkeld.

A. All right.

131. Q. I believe that is the month Mr. Comer was referring to on cross examination, in which 8216 was your total number of planes?

A. That is correct.

132. Q. In order to clarify that, what is the total number of military craft for that month?

A. It is 1647.

133. Q. What is the total number of civilian craft for that month?

A. 6220 civilian local and civilian itinerants 149.

134. Q. On these commercial airliners, is there a night flight from those airliners every night?

A. That is correct.

135. Q. What time of the night does that flight come in?

A. The schedule has just been changed. During

307 the months referred to up to January, there was a flight in around eight o'clock and one at 11:55 approximately.

136. Q. So that every night since you have been in the tower, weather conditions permitting, there is a commercial airliner flooding the house at night, using lights on the field for night flying?

A. That is correct.

RE-CROSS-EXAMINATION FOR PLAINTIFFS

By Mr. COMER:

137. Q. All of the big bombers are army or navy planes that come in?

A. Possibly, or coastguard. They are military.

138. Q. They are all military?

A. That is true.

By the COMMISSIONER:

139. Q. Did you want to give any explanation in connection with the question asked you awhile ago when you started to say: "but—"?

A. I was trying to explain about the 6220 light aircraft, and the reason our total was so high that particular month.

140. Q. The question is what are the facts, not the reason.

A. We had heavy local club traffic, continuously shooting landings, that is not military traffic.

308 Captain GEORGE A. LACROIX, a witness produced on behalf of defendant, having been duly sworn and examined at a previous hearing, was recalled for further examination, and in answer to interrogatories testified as follows:

By Miss FAGAN:

1. Q. You were qualified in this matter on a former hearing?

A. Yes.

2. Q. And you are still Commanding Officer of the Greensboro-High Point Airport for the ferrying command?

A. That is correct.

3. Q. Referring to the military craft which use this Greensboro-High Point Airport, exactly what types of military craft use that airport?

A. Bombers, transports, fighters, trainers.

4. Q. How would you classify those, so far as heavy and light?

A. Bombers first, transports second, fighters third, trainers fourth.

5. Q. How would they be classified so far as comparison with the commercial airliner?

A. Transport would be about the same.

6. Q. Then a bomber would be heavier than a commercial airliner?

A. That is correct.

7. Q. And your other two lighter than the commercial airliner?

A. That is right.

309 7. Q. In regard to the rate of climb on these various aircraft, taking a bomber flying under what you would call the most adverse weather conditions, what rate of speed would a bomber be going at the time it reached the end of the paved portion of the southeast runway?

A. 110 to 120 miles an hour under most adverse conditions.

8. Q. What would its rate of climb be?

A. Approximately 300 to 400 feet a minute.

9. Q. How high would that plane be in the air by the time it reached a point approximately 2250 feet from the end of the runway?

A. Approximately 75 feet. There might be a little variation there but approximately 75 feet.

CROSS-EXAMINED FOR PLAINTIFFS

By Mr. Comer:

10. Q. That was for a bomber?

A. That is correct.

11. Q. Of course the smaller planes would go higher than that?

A. Yes. These figures are under most adverse conditions.

12. Q. In a transport or mail or passenger plane, that would be some higher than a bomber?

A. Yes, the average commercial airliner rate of climb after reaching speed of 110 miles an hour would climb

approximately 500 feet a minute.

310 13. Q. It would probably be 125 feet above the property?

A. 120 feet.

Stipulation

It is further stipulated and agreed by and between the parties hereto, pursuant to the stipulation entered into at a former hearing on May 26, 1944, shown at page 202 of the transcript, that the description of the real estate shown and entered on page 203 of the transcript of the testimony is a description of the real estate forming what is known as the Greensboro-High Point Municipal Airport and owned by the Greensboro-High Point Municipal Airport Authority.

Defendant closes.

Plaintiffs offer no further testimony.

311 *Government Exhibit 5*

U. S. Standard Form No. 2 (Revised)
Approved by the Secretary of the Treasury
May 7, 1935

W 2287 eng 63

LEASE BETWEEN GREENSBORO-HIGH POINT AIRPORT AUTHORITY AND THE UNITED STATES OF AMERICA

1. This Lease, made and entered into this 11th day of May, in the year one thousand nine hundred and forty two by and between Greensboro-High Point Airport Authority whose address is P. O. Box 997, Greensboro, North Carolina, for itself, its successors, and assigns, hereinafter called the Lessor, and THE UNITED STATES OF AMERICA, hereinafter called the Government:

Witnesseth: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government the following described premises, viz: the Greensboro-High Point Airport, plat of which is hereto attached, marked "Exhibit A", and made a part of this lease. It is understood and agreed that the full, exclusive and unrestricted use of same by the Government shall be exercised concurrently, jointly, and in common with the Lessor and its tenants. It is further agreed and understood that the Lessor leases to the Government the present steel hangar located on said airport property, and ten acres of land, more or less, adjoining the said hangar, for the exclusive use of the Government. The said hangar and ten-acre tract of land, more or less, is designated by red lines on the plat marked "Exhibit A". However, it is understood and agreed that the Lessor retains the right of ingress, egress and regress for the purpose of servicing and inspecting the water pump which is located on said tract of land, to be used exclusively for the following purposes (see instruction No. 3): Requirements of the War Department.

3. To have and to hold the said premises with their appurtenances for the term beginning and ending with June 1st, 1942, June 30th, 1942.

312

WAR DEPARTMENT
OFFICE OF THE DIVISION ENGINEER
SOUTH ATLANTIC DIVISION
50 Whitehall Street
ATLANTA, GEORGIA

601.53 DSW
Greensboro-High Point Airport, N. C.
SARE-3

AUGUST 17, 1942.

Mr. J. T. MARTIN, *President,*
Greensboro-High Point Airport Authority,
P. O. Box 597, Greensboro, North Carolina.

DEAR SIR: Inclosed for your file is a fully executed number of lease No. W-2287 Eng-638 covering premises comprising the Greensboro-High Point, North Carolina, Airport. Your effort and cooperation in connection with leasing premises to the Government is highly appreciated.

Also inclosed, is renewal of the above lease to be executed in quadruplicate and returned to this office for execution on behalf of the Government. Upon completion, a fully executed number will be provided for your file.

For the Division Engineer:

Very truly yours,

James P. Brown.
JAMES P. BROWN,
1st Lt., Corps of Engineers, Assistant.

2 Incls.
1-Cy of lease,
2-Cy renewal (quad)

Government Exhibit 7

313 4. The Government shall not assign this lease in any event, and shall not sublet the demised premises and will not permit the use of said premises by any one other than the Government, and the agents and servants of the Government.

5. This lease may, at the option of the Government, be renewed from year to year at a rental of Two Hundred Forty Dollars Thirty-Five Cents ($240.35) per annum and otherwise upon the terms and conditions herein specified, provided notice be given in writing to the Lessor at least one day before this lease or any renewal thereof would otherwise expire: Provided that no renewal thereof shall extend the period of occupancy of the premises beyond the 30th day of June, 1967, or six months after the end of the present National Emergency, whichever shall first occur.

6. The Lessor shall furnish to the Government, during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following: available water, electricity and other utilities that are now installed at the Greensboro-High Point Airport concurrently and in common with the Lessor and its tenants at said Airport. However, it is understood and agreed that the Government will pay for that portion of water and other utilities which are furnished to, consumed by, or used by the Government, in accordance with contracts which the Government will enter into with the Lessor or its tenants before the furnishing of water, electricity or other utilities.

7. The Government shall pay the Lessor for the premises rent at the following rate: Two Hundred Forty Dollars Thirty-Five Cents ($240.35) for the period June 1, 1942 to June 30, 1942 Payment shall be made at the end of each fiscal year, by the Finance Officer, U. S. A. Fort McPherson, Atlanta, Georgia.

8. The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located): which fixtures, additions, or structures so placed in or upon or attached to the said premises shall

be and remain the property of the Government and may be removed therefrom by the Government prior to the termination of this lease, and the Government, if required by the Lessor, shall, before the expiration of this lease or renewal thereof, restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted: Provided, however, that if the Lessor requires such restoration, the Lessor shall give written notice thereof to the Government one day before the termination of the lease, or, the Government may, at its option, leave such fixtures, additions, structures and other improvements on the leases premises in lieu of restoring the premises as provided herein.

314 9. All property used exclusively by the Government in and upon the premises shall be maintained by the Government. All property in and upon the premises described in paragraph 2 of this lease and used concurrently and in common by the Government with the Lessor and other tenants shall be maintained in safe and usable condition for the purposes intended by either party or by both parties hereto and upon such terms as may be mutually agreed upon in writing from time to time; it being understood and agreed that all such agreements shall provide equitable division of maintenance and repair costs based upon the use made of the property by the Government as distinguished from the use made of the property by the Lessor and other tenants.

10. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

11. Nothing in this lease is to prevent the continued operation of the Greensboro-High Point Airport as an accredited C. A. A. Public Airport.

12. If the requirements of the War Department under this lease shall prevent the operation of the said airport as set forth under the terms of paragraph 11 hereof, then this lease shall terminate and a new lease must be negotiated between the parties hereto.

13. Nothing contained herein shall prevent the Lessor from entering into a contract or lease with any other person, firm or corporation for the use of the Airport, or any part thereof, or for any concession thereon, provided said contracts or leases shall be made subject to the terms of this lease.

315 INSTRUCTIONS TO BE OBSERVED IN EXECUTING LEASE

1. This standard form of lease shall be used whenever the Government is the lessee of real property; except that when the total consideration does not exceed $100 and the term of the lease does not exceed 1 year the use of this form is optional. In all cases where the rental to be paid exceeds $2,000 per annum the annual rental shall not exceed 15 per centum of the fair market value of the rented premises at the date of lease. Alterations, improvements, and repairs of the rented premises by the Government shall not exceed 25 per centum of the amount of the rent for the first year of the rental term or for the rental term, if less than 1 year.

2. The lease shall be dated and the full name and address of the lessor clearly written in paragraph 1.

3. The premises shall be fully described, and, in case of rooms, the floor and room number of each room given. The language inserted at the end of article 2 of the lease should specify only the general nature of the use, that is, "office quarters," "storage space," etc.

4. Whenever the lease is executed by an attorney, agent, or trustee on behalf of the lessor, two authenticated copies of his power of attorney, or other evidence to act on behalf of the lessor, shall accompany the lease.

5. When the lessor is a partnership, the names of the partners composing the firm shall be stated in the body of the lease. The lease shall be signed with the partner-

ship name, followed by the name of the partner signing the same.

6. Where the lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of his authority so to act shall be furnished.

7. Under paragraph 6 of the lease insert necessary facilities to be furnished, such as heat, light, janitor service, etc.

8. There shall be no deviation from this form without prior authorization by the Director of Procurement, except—

(*a*) Paragraph 3 may be drafted to cover a monthly tenancy or other period less than a year.

(*b*) In paragraph 5, if a renewal for a specified period other than a year, or for a period optional with the Government is desired, the phrase "from year to year" shall be deleted and proper substitution made. If the right of renewal is not desired or cannot be secured paragraph 5 may be deleted.

(*c*) Paragraph 6 may be deleted if the owner is not to furnish additional facilities.

(*d*) If the premises are suitable without alterations, etc., paragraph 8 may be deleted.

(*e*) Paragraph 9 provides that the lessor shall, "*unless herein specified* to the contrary, maintain the said premises in good repair, etc." A modification or elimination of this requirement would not therefore be a deviation.

(*f*) In case the premises consist of unimproved land, paragraph 10 may be deleted.

(*g*) When executing leases covering premises in foreign countries, departure from the standard form is permissible to the extent necessary to conform to local laws, customs, or practices.

(*h*) Additional provisions, relating to the particular subject matter mutually agreed upon, may be inserted, if not in conflict with the standard provisions, including a

mutual right to terminate the lease upon a stated number of days' notice, but to permit only the lessor so to terminate would be a deviation requiring approval as above provided.

9. When deletions or other alterations are permitted specific notation thereof shall be entered in the blank space following paragraph 11 before signing.

10. If the property leased is located in a State requiring the recording of leases in order to protect the tenant's rights, care should be taken to comply with all such statutory requirements.

316 14. If the said premises be destroyed by fire or other casualty this lease shall immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, either party may terminate the lease by giving written notice to the other within fifteen days thereafter, and if so terminated no rent shall accrue to the Lessor after such partial destruction or damage.

CHANGES BEFORE EXECUTION: Original paragraphs 9, 10, and 11 deleted. Paragraphs 9, 10, 11, 12, 13, 14 added.

In witness whereof, the parties hereto have hereunto subscribed their names as of the date first above written.

GREENSBORO-HIGH POINT AIRPORT AUTHORITY.
By: J. T. MARTIN, *Lessor.*

In presence of:

.....

.....
(Address)

UNITED STATES OF AMERICA,
By James P. Brown
JAMES P. BROWN, *1st Lt. C of E*
Purchasing and Contracting Officer.
(Official title)

The Supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to Procurement Authority. ENG

30349 P 331 05 A 0905-23. The available balance of which is sufficient to cover cost of same.

(If Lessor is a corporation, the following certificate shall be executed by the secretary or assistant secretary.)

I, Ceasar Cone, certify that I am the Secretary of the Lessor in the attached lease; that J. T. Martin, who signed said lease on behalf of the Lessor, was then Chairman of Greensboro-High Point Airport Authority; that said lease was duly signed for and in behalf of said Authority by authority of its governing body.

CEASAR CONE [CORPORATE SEAL]

The foregoing lease is approved, confirmed and ratified, pursuant to resolution of Board of Directors of Greensboro-High Point Airport Operators, Incorporated.

This the 12th day of May, 1942.

GREENSBORO-HIGH POINT AIRPORT OPERATORS, INCORPORATED,

By J. T. MARTIN, *President.*

[SEAL]

CEASAR CONE
Secretary

Government Exhibit 8

317 SUPPLEMENTAL AGREEMENT No. 1

Lease W 2287 eng 638

Know All Men By These Presents:

Whereas, on May 11, 1942, lease W 2287 eng 638 was entered into by and between the United States of America and the Greensboro-High Point Airport Authority covering premises comprising the Greensboro-High Point, North Carolina Airport, for the period beginning June 1, 1942 and ending June 30, 1942 and renewable through June 30, 1967 or six months after the termination of the present National Emergency, whichever shall first occur, and

Whereas, the certain tract of land referred to in the

legal description contained in paragraph 2 of the lease is leased for exclusive use of the Government, and

Whereas, the said tract of land is not accurately described in the legal description contained in said lease and it is desired that a metes and bounds legal description be incorporated in the lease,

Now, therefore, in consideration of the sum of one dollar ($1.00) in hand this day paid, the receipt and sufficiency of which is hereby acknowledged, the lease is modified in the following respects and in these particulars only:

Article 2—Delete the following quoted last three sentences contained in paragraph 2 of lease W 2287 eng 638:

"It is further agreed and understood that the lessor leases to the Government the present steel hangar located on said airport property, and ten acres of land, more or less, adjoining the said hangar, for the exclusive use of the Government. The said hangar and ten-acre tract of land, more or less, is designated by red lines on the plat marked "Exhibit A". However, it is understood and agreed that the Lessor retains the right of ingress, egress and regress for the purpose of servicing and inspecting the water pump which is located on said tract of land."

Substitute in lieu of the above quoted deletion the following:

"It is further agreed and understood that the lessor leases to the Government for its exclusive and unrestricted use a 21.5 acre tract of land and all improvements located thereon, said tract being described as follows: Beginning at the most southerly point of the Greensboro-High
318 Point Airport property, said point being located at the north edge of U. S. Highway No. 421, and between the Greensboro-High Point Airport property and the Lindley Nurseries Inc., property; thence N 29° 19' W a distance of 60.25 feet to a corner between the Greensboro-High Point Airport property and the Lindley Nurseries Inc., property; then N 64° 34' N a distance of 500 feet to a point between the Greensboro-High Point

Airport property and the Lindley Nurseries Inc., property; thence N 55° 08' W a distance of 1800 feet to a point on the Greensboro-High Point Airport property; thence S 34° 52' W a distance of 588.1 feet to a point on the north edge of U. S. Highway No. 421 on the southwest boundary line of the Greensboro-High Point Airport property; thence S 55° 06' E a distance of 1561.86 feet to the point of beginning. The plot contains 21.5 acres more or less. However, it is understood and agreed that the Lessor retains the right of ingress, egress and regress for the purpose of servicing and inspecting the water pump which is located on said tract of land."

[SEAL]

Witness our hands and seals this 7th day of April, 1943.

GREENSBORO-HIGH POINT AIRPORT AUTHORITY.

By (s) J. T. Martin.
J. T. MARTIN.

UNITED STATES OF AMERICA.

.....

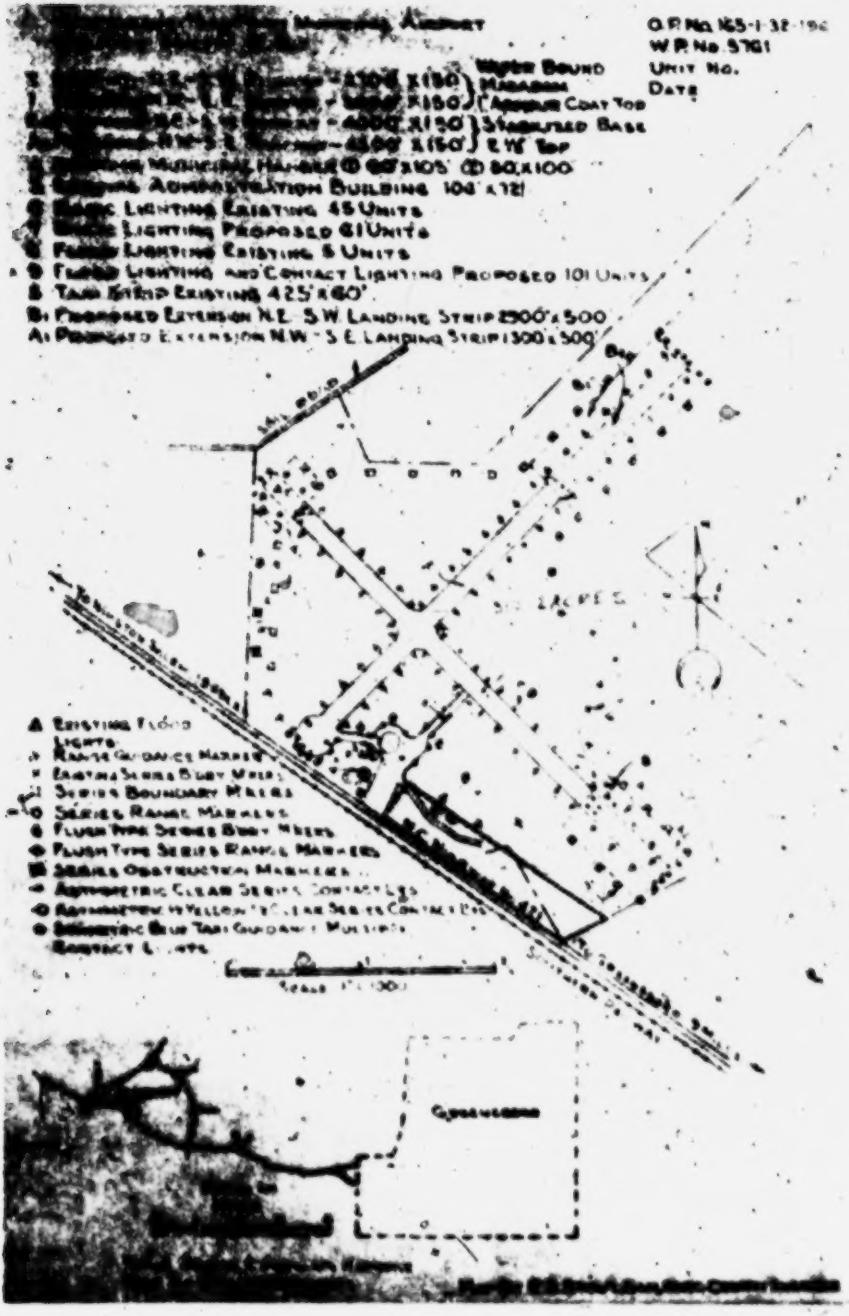
.....

(Official Title)

Witness:

/s/ C. H. LAFONTAINE, *Atlanta, Ga.*

I, Ceasar Cone, certify that I am Secretary of the lessor named in the attached supplemental agreement, that J. T. Martin, who signed said supplemental agreement on behalf of the lessor was then Chairman of the Greensboro-High Point Authority; that said supplemental agreement was duly signed for and in behalf of said Authority by authority of its governing body.


Municipal Airport
O.P. No. 165-1-32-196
W.P. No. 5761
Unit No.
Date
Water Bound Macadam (Asphalt Coat Top)
Stabilized Base
Municipal Hangar
Administration Building 104' x 121'
Flood Lighting Existing 45 Units
Flood Lighting Proposed 61 Units
Flood Lighting Existing 5 Units
Flood Lighting and Contact Lighting Proposed 101 Units
Taxi Strip Existing 425' x 60'
Proposed Extension N.E. S.W. Landing Strip 2500' x 500'
Proposed Extension N.W. - S.E. Landing Strip 1300' x 500'
Existing Flood Lights
Range Guidance Markers
Existing Series Buoy Wells
Series Boundary Markers
Series 6 Range Markers
Flush Type Series Buoy Wells
Flush Type Series Range Markers
Series Obstruction Markers
Asymmetric Clear Series Contact Lights
Asymmetric Yellow "C" Clear Series Contact Lights
Bidirectional Blue Taxi Guidance Markers
Contact Lights
Scale 1" = 100'
Gravelbank

320 Form ACA 954

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE 2185
CIVIL AERONAUTICS ADMINISTRATION
WASHINGTON

LANDING AREA DESIGNATION

To Whom It May Concern:

I hereby designate Greensboro-High Point Airport, Guilford, Greensboro, North Carolina.

A LANDING AREA FOR CIVIL AIRCRAFT OPERATIONS

This designation is valid only when the required roster of approved landing area personnel is attached hereto and when the landing area is operated with at least the minimum staff required, and only so long as in the opinion of the Administrator operations are conducted in accordance with the provisions of the Civil Air Regulations and rules and regulations of the Administrator of Civil Aeronautics with respect to the conduct of landing area operations.

A. O. STANTON,
Administrator of Civil Aeronautics.

Date April 19, 1943.

Government Exhibit 9

321 SUPPLEMENTAL AGREEMENT No. 2

Lease No. W 2267 eng 638

Know All Men By These Presents:

Whereas, lease W 2287 eng 638 was entered into on May 11, 1942 by and between the Greensboro-High Point Authority, hereinafter referred to as lessor, and the United States of America, hereinafter referred to as the Government, covering premises comprising 21½ acres of the Greensboro-High Point North Carolina Airport for the period beginning June 1, 1942 and ending June 30, 1942 and renewable through June 30, 1967 or six (6) months

after the termination of the present National Emergency, whichever shall occur first, and

Whereas, Supplemental Agreement No. 1 to lease W 2287 eng 638 was entered into on the 7 Day of April 1943 by and between the lessor and the Government, which Supplemental Agreement accurately described the leased premises by metes and bounds, and

Whereas, it is now the desire of the lessor and to the interest of the Government that additional land be included in the description contained in the said lease and particularly by metes and bounds in the aforementioned particularly described by metes and bounds in the aforementioned Supplemental Agreement No. 1:

Now, therefore, for and in consideration of One ($1.00) Dollar the receipt and sufficiency of which is hereby acknowledged, it is understood and agreed between the parties hereto that effective January 10, 1944 lease No. W 2287 eng 638 and Supplemental Agreement No. 1 thereto is amended in the following respect and in this particular only:

Article 2—following the metes and bounds description of the leased premises as set out in paragraph 2 of lease W 2287 eng 638, as amended by Supplement Agreement No. 1, the following metes and bounds description of additional land is to be added:

Beginning at a point on the Western boundary line of the 21.5 acre tract previously leased from the Greensboro-High Point Authority described in Lease No. W 2287 eng 638 said point being 336.8 feet N. 34 degrees 52' E. from the center line of U. S. Highway No. 421, said line running 20.6 feet east of the Southeast corner of the all Steel Hangar at the entrance of the Greensboro-High Point Airport, said line being at right angles to the center line of U. S. Highway No. 421, thence N. 35 degrees 08 minutes West 145.05 feet to a point; thence N 34 degrees 52 minutes east 96.13 feet to a point; thence S 47 degrees 48 minutes east 137.42 feet to a point on the original lease line; thence S 34 degrees 52 minutes west 128.2 feet to the beginning and containing 0.351 acres, and being a part of

the same land described in a deed dated June 1, 1942 from Guilford County to Greensboro-High Point Airport Authority recorded June 5, 1942 in Deed Book 994, 322 page 26 in the Office of Register of Deeds for Guilford County, North Carolina.

Witness our hands and seals this 11th day of January 1944.

GREENSBORO-HIGH POINT AIRPORT AUTHORITY.
By J. T. MARTIN, *Chairman.*

UNITED STATES OF AMERICA.

.....

.....

(Official Title)

Witness

.....

.....

I, Ceasar Cone, certify that I am the Secretary of the Greensboro-High Point Authority named in the attached Supplemental Agreement No. 2 as lessor, that J. T. Martin, who signed said Supplemental Agreement No. 2 on behalf of the lessor was then Chairman of the Greensboro High Point Authority; that said Supplemental Agreement No. 2 was duly signed for and in behalf of said Greensboro-High Point Airport Authority within the scope of its powers and the authority of its governing body.

Ceasar Cone.
CEASAR CONE, *Secretary.*

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Office Supreme Court, U.S.
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CLERK

No. 630

Supreme Court of the United States

October Term, 1945

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 630

UNITED STATES OF AMERICA, PETITIONER

v.

THOMAS LEE CAUSBY AND WIFE, TINIE CAUSBY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on June 4, 1945, by the Court of Claims.

OPINION BELOW

The opinions of the Court of Claims (R. 11-22) are reported in 60 F. Supp. 751.

JURISDICTION

The judgment of the Court of Claims sought to be reviewed was entered on June 4, 1945 (R. 22). A motion by the United States for a new trial was denied on October 1, 1945 (R. 22). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939, 28 U. S. C. sec. 288 (b).

QUESTIONS PRESENTED

Effective June 1, 1942, the United States leased the Greensboro-High Point, North Carolina, Airport for one year with a right to renew until June 30, 1967, or six months after the end of the present national emergency, whichever should first occur. The lease gave the Government the right to use the airport for requirements of the War Department concurrently with the lessor and its tenants. The plaintiffs in the Court of Claims owned a parcel of land on which they lived and operated a chicken business, some 2,200 feet from the airport. Upon these facts the following questions are presented:

1. Whether the flight of aircraft over plaintiffs' land at a minimum elevation of 83 feet constituted a taking for which recovery may be had under the Tucker Act.

2. If so, whether the effect of the noise and lights of aircraft crossing above the land and the landowner's knowledge that airplane accidents have taken place at or in the vicinity of the airport may be considered in determining compensation to be paid for such taking.

3. Whether the Court of Claims erred in failing to specify what property interest was taken and whether such interest was permanent or temporary.

4. Whether the ultimate conclusion determining compensation to be $2,000 is supported by evidentiary findings and by substantial evidence.

STATEMENT

This action was brought by Thomas Causby and his wife to recover $7,035 for the alleged taking of plaintiffs' lands and for damages to their poultry business which was alleged to have resulted from the flight of War Department aircraft over plaintiffs' lands. The facts and the proceedings in the court below may be summarized as follows:

Since 1927 or 1928 there has been an airfield some eight miles from Greensboro, North Carolina (R. 5). During 1939, extensions were made to one or both of the runways of the airfield which run from northeast to southwest and from northwest to southeast and are 4,000 feet and 3,370 feet long, respectively (R. 5–6). In April 1942 the Greensboro-High Point Municipal Airport Authority, which now operates the airport, was activated pursuant to North Carolina statute (R. 5). On May 11, 1942, the Authority executed a lease to the United States for a term ending June 30, 1942, with a provision for renewals until June 30, 1967, or six months after the end of the present national emergency, whichever should first occur (R. 6). The lease gave the United States the right to use the airport "concurrently, jointly and in common with the Lessor and its tenants" (R. 218).

In 1934 the Causbys purchased 2.8 acres in a strip 100 feet wide and 1,200 feet long (R. 4–5). In 1937 improvements were completed consisting

of a six-room dwelling and various outbuildings principally used for a chicken farm (R. 4). The path of glide to the northwest-southeast runway passes directly over the Causby property, the end of the paved runway being 2,220 feet from their barn and 2,275 feet from their house (R. 8). Between the airfield and the Causby property is a 38.04 acre tract owned by the Government and three privately owned tracts comprising 74.62 acres (R. 6–7). The 30 to 1 safe glide angle approved by the Civil Aeronautics Authority passes over the Causby property at a minimum elevation of 83 feet, which is 67 feet above the dwelling, 63 feet above the barn and 18 feet above the highest tree (R. 8).[1]

Plaintiffs and their witnesses testified that while the civilian planes using the airport bothered them somewhat, use of the airport by the Army, particularly by heavy bombers, interfered with their sleep, etc., because of the noise and lights (R. 34–37, 52–53). Plaintiffs claimed that because of the effect of the noise and lights on the chickens, they were forced to go out of the poultry business (R. 38). They also claimed that uneasiness was produced from fear of accidents (R. 39–40, 46–

[1] The court below described the 30 to 1 glide angle as follows (R. 12):

> This means that there must be no obstruction more than a foot high 30 feet from the end of the runway, and that the height of any obstruction must not exceed 1/30 of its distance from the end of the runway. This angle of glide is supposed to be safe under the worst conditions.

47, 59). Plaintiffs claimed their property was uninhabitable but admitted that, except for a two-month period, they continued to live there (R. 41, 48, 55). The only evidence of value or damages presented by plaintiffs was that the fee value of the property was about $4,700 (R. 25–26, 31–32) and Causby's testimony that the fair value of the loss of the chicken business was $1,000 (R. 38). At least one of plaintiffs' experts admitted the land had incresed in value by reason of the airport (R. 30).

The Government introduced evidence that the runway near plaintiffs' property was used only 4% of the time in taking off and 7% in landing (R. 7, 204–208). It also introduced data showing that all military traffic at the airfield represented about ⅓ or less of all traffic at the airfield and that heavy four-motor bombers constituted only 10% of all military traffic (R. 7–8, 204–208). The details of four airplane accidents were given, from which it appeared that two fatal crashes had occurred one mile and two and one-half miles from the Causby property, respectively. The other two accidents were at the airport and consisted of a landing with the plane's wheels up and of an abortive take-off which did no damage either to the plane or to other property. (R. 9, 209–213.) These facts were incorporated by the court in its findings. In addition, Government experts valued plaintiffs' property between $2,500 and $2,885 (R. 81, 96–98, 113–114) and testified that the airport

hazard did not substantially affect the market value (R. 89, 101).

After finding the facts above outlined as to location of the property, the history of the airport, and the use made of it by Army aircraft, the Court of Claims found (Findings 11–12; R. 9–10):

> Since the United States began operations about May 1942, its four-motored heavy Army and Navy bombers, the fighter and certain other planes of the heavier type, in taking off from and landing at this airport, have frequently passed over plaintiffs' property, their house, and chicken houses both day and night and, at times, in considerable numbers rather close together. They come close enough at times to appear to barely miss the tops of trees on the property and at times close enough to the tops of the trees to cause the old leaves on the trees to fly off. The noise so close to the buildings is startling and at night the glare from the planes brightly lights up the immediate area.
>
> The planes became more numerous after the Army began its operations and this situation has been continuous since that date. There is no evidence of an intention to use or of an intention not to use the airport for its heavy bombers after the termination of defendant's lease, other than the fact that defendant has the right to renew its lease only until six months after the end of the

present emergency or until June 30, 1967, whichever date is the earlier.

12. The result of this situation, together with knowledge of the accidents that have occurred, is that the plaintiffs and their family have become nervous and frightened. At night they are frequently deprived of sleep. The peace and comfort of their home are seriously interfered with. Their property, for the same reason, has depreciated in value.

After describing the effect of the planes upon the chickens, the court found (Findings 13–14; R. 10–11):

Plaintiffs finding themselves losing money gave up the chicken business. Chickens that had cost approximately $2.50 each to hatch and raise for production purposes were sold on the market for $1.50 each. This situation had destroyed the use of the property as a commercial chicken farm.

14. The value of plaintiffs' property that was destroyed and the value of the easement taken, together with the damage to the remainder of plaintiffs' property as a result of the taking of the easement, is $2,000.00.

The opinion of the court below stated that a property owner may prohibit any use of the air space above his land "that interferes with his right to light, air, view, or the safe and peaceful occupation and enjoyment of his land" (R. 14).

It held that the instant case is controlled by *Portsmouth Harbor Land & Hotel Co.* v. *United States,* 260 U. S. 327. It further held that the right to fly over the property at the stated heights had been taken permanently, not temporarily. (R. 17.) While recognizing that plaintiffs were not entitled to recover the damage to their business, the court concluded (R. 18):

> From all the testimony, we have concluded that the value of the property destroyed and of the easement taken and the damage to plaintiffs' property resulting from the taking of this easement is the sum of $2,000.00. A judgment in the nature of a jury verdict will be rendered for this amount.

Judge Madden dissented on three grounds. First, he took the view that there was no basis for the assumption that the Government's activities at the airport would be carried on permanently. Second, he expressed the opinion that the Government had the right, at least in wartime, to fly its planes through the air space over an owner's lands when the flights are at a safe altitude and no more frequent than in this case. Finally, he thought that, assuming that what the Government did was a legal wrong, there was no taking of plaintiffs' property.

On October 1, 1945, the Court denied the Government's motion for a new trial but added to Finding 14 (*supra,* p. 7) the statement (R. 22):

The date of the taking of the easement was June 1, 1942.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that property had been taken from the plaintiffs.

2. In holding that the damages caused by the noise of aircraft could be considered in determining compensation.

3. In holding that the damages resulting from lights of aircraft could be considered in determining compensation.

4. In holding that the damages claimed to have resulted from fear of aircraft accidents could be considered in determining compensation and in failing to find whether such fear was shared by the public generally, whether it was reasonable and whether it affected market value.

5. In failing to define what property interest was taken.

6. In failing to find whether such interest was permanent or temporary.

7. In concluding that a permanent interest had been taken, in the absence of evidence to support such a conclusion.

8. In finding and concluding that compensation should be $2,000, in the absence of evidentiary findings and evidence to support such conclusion.

9. In awarding the value of property "de-

stroyed" without any finding that any property was destroyed.

10. In entering judgment against the United States.

REASONS FOR GRANTING THE WRIT

The minimum angle of glide for aircraft passes over the Causby property at an elevation of 83 feet (R. 8). There has been no interference with any present or potential use of the air space located above that height. The court below recognized that the old common law view that the landowner owns to the sky has been abandoned. However, the majority of the court below declared that a landowner may prohibit any use of air space which "interferes with his right to light, air, view or the safe and peaceful occupation and enjoyment of his land" (R. 14). The dissenting judge thought that the Government has a right to fly its planes through the air space when there is no danger of physical contact with the landowner's property.

The court below concluded that flying through the air space was a trespass and that assertion of the right to do so constituted the taking of an easement. Having reached this conclusion, the recovery of the damages resulting from noise, lights, and fear of accidents was justified on the theory that when a portion of a single unit of property is taken, "it is well settled that a plaintiff may recover not only the value of the part of

his land which has been taken, but also the damage to the remainder resulting from the taking of a part of it" (R. 16). Thus, the court held here that a landowner "owns the air space above his land as completely as he does the land itself or the minerals beneath it, at least insofar as it is necessary for his full and complete enjoyment of the land itself" (R. 14).

1. The decision is in conflict with that in *Hinman* v. *Pacific Air Transport*, 84 F. 2d 755, certiorari denied, 300 U. S. 654, in which the Circuit Court of Appeals for the Ninth Circuit held that flying through air space within 100 feet or even 5 feet of the surface was not a technical trespass upon the property of the landowner but rather that the landowner's only right was to prevent an actual interference to his possession or his beneficial use of the land. The court was of the view that it is not legally possible to obtain an easement by prescription through air space. See also *Smith* v. *New England Aircraft Co.*, 270 Mass. 511; *Delta Air Corporation* v. *Kersey*, 193 Ga. 862; Note, 7 Journal of Air Law, 624. As Mr. Justice Jackson stated in his concurring opinion in *Northwest Airlines* v. *Minnesota*, 322 U. S. 292, 302–303:

> The ancient idea that landlordism and sovereignty extend from the center of the world to the periphery of the universe has been modified. Today the landowner no more possesses a vertical control of all the

air above him than a shore owner possesses horizontal control of all the sea before him. The air is too precious as an open highway to permit it to be "owned" to the exclusion or embarrassment of air navigation by surface landlords who could put it to little real use.

The decision in *Portsmouth Harbor Land & Hotel Co.* v. *United States*, 260 U. S. 327, is not, as the court below thought (R. 14–16), controlling here. The right to use air space for planes and similar purposes without any physical interference with surface uses was not involved nor was it discussed in the opinion. The allegations of the complaint in that case, which were held to be sufficient, claimed that there had been a taking of the land. The Court applied (260 U. S. at p. 329) the principles established in the predecessor case of *Peabody* v. *United States*, 231 U. S. 530. There the Court cited only the decisions in *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166, *United States* v. *Lynah*, 188 U. S. 445, and *United States* v. *Welch*, 217 U. S. 333, to support the proposition that subjection of land in time of peace to the burden of governmental use by firing projectiles at will over it might well be considered to be a taking (231 U. S. at p. 538). Thus, the *Portsmouth* case was simply another application of the view established in the *Pumpelly, Lynah* and *Welch* cases, in all of which the plaintiffs' lands had been permanently flooded,

that the destruction of all uses for property constituted a taking. This was obviously based upon the danger that rather than passing over the claimant's land the projectiles would land upon it. No such case is presented here because the minimum height of flight over the Causby property is 83 feet and the claim to a substantial award here is based not upon any physical interference with the plaintiffs' property but upon noise, the glare from lights, and the fear of accidents.

The court below assumed its conclusion when it stated that a landowner had a right to the "peaceful occupation and enjoyment of his land" (R. 14). The very decisions cited by the court show that the owner does not have a right to prohibit the noise incidental to activities otherwise legal. Thus, in *Delta Air Corporation* v. *Kersey*, 193 Ga. 862, the court held that an abutting property owner could not complain of noise and dust which is simply an incident to ordinary use of the airport. In *Smith* v. *New England Aircraft Co.*, 270 Mass. 511, the court referred to many instances where the effect of noise, smoke, etc., must be borne by the property owner. As Judge Madden pointed out (R. 19–20), the many decisions which deny individuals the recovery of damages which result from noise, vibrations and the like, incidental to the operation of railroads are apt analogies here. *Richards* v. *Washington Terminal Co.*, 233 U. S. 546; see 1 Nichols,

Eminent Domain (2d ed. 1917) sec. 114, pp. 317–318, and cases there cited. Clearly, a distinction cannot be based upon the fact that the noise here was made in the air space above the Causby property rather than on or over abutting property. In fact, plaintiffs did not complain of the smaller aircraft which fly through the same air space but only of the increased noise caused by heavy bombers. That noise would be largely the same if, rather than flying over the Causby strip, which is only 100 feet wide, the planes were flying over neighboring land.

2. Even if the plaintiffs owned the air space above their land, there has not been a taking which would justify the award of substantial damages under the Tucker Act. The physical use of the air space was, at most, merely a theoretical taking which did not involve damage. Cf. *Marion &c. Ry.* v. *United States*, 270 U. S. 280. It is the noise, the lights of the planes and the fear of accidents upon which the claim is based. These factors constituted simply consequential damage and not a taking. *Bedford* v.

In addition to damages from noise and lights, consideration was given to plaintiffs' alleged fear of accidents (Finding 12; R. 10). The Court of Claims made no finding that there was actually a probability of damage to plaintiffs' property from accidents or even that there was a reasonable public apprehension thereof which would depreciate market value. Such a fear on the part of plaintiffs is too speculative and conjectural to be considered in awarding compensation. *Miller* v. *United States*, 137 F. 2d 592 (C. C. A. 3); *Meriden* v. *Zwalniski*, 88 Conn. 427, 433–434.

United States, 192 U. S. 217; *Manigault* v. *Springs*, 199 U. S. 473; *Jackson* v. *United States*, 230 U. S. 1; *Hughes* v. *United States*, 230 U. S. 24; *Cubbins* v. *Mississippi River Comm'n.*, 241 U. S. 351; *Sanguinetti* v. *United States*, 264 U. S. 146. The mere fact that some property interest has been taken does not render compensable what would otherwise constitute consequential damage. In *United States* v. *Willow River Power Co.*, 324 U. S. 499, 501, nominal damage was done "to land as land or to structures as such" but that did not authorize recovery of power value. Cf. *Danforth* v. *United States*, 308 U. S. 271, 286; *Court of Marion County, W. Va.* v. *United States*, 53 C. Cls. 120; *United States* v. *Meyer*, 113 F. 2d 387 (C. C. A. 7). The decision in *United States* v. *Grizzard*, 219 U. S. 180, relied upon by the court below (R. 16), is not to the contrary. That case simply held that when the taking of a portion of a tract of land rendered access to the remainder less convenient the resulting depreciation in value to the remainder was compensable.

The claim for damage resulting from noise, lights and fear of accidents would seem to constitute a claim sounding in tort, of which the Court of Claims does not have jurisdiction. Cf. *Sanguinetti* v. *United States*, 264 U. S. 146; 3 Comp. Gen. 234. The liability, if any, of private persons under the circumstances of this case would be in tort for the maintenance of a nuisance. Cf. *Delta Air Corporation* v. *Kersey*, 193 Ga. 862;

Smith v. *New England Aircraft Co.*, 270 Mass. 511. Any such liability of the United States must rest on special Acts of Congress or on general legislation, not presently existing, dealing with these problems.

3. The court made no attempt to specify what property interest had been taken except to refer to an "easement". No attempt was made to define either a minimum permissible altitude of flight, the type of aircraft which might be flown over the land, or the frequency of flight. Clearly, a finding as to what property interest was taken is essential both for the purpose of valuing that interest and for the purpose of defining the rights which the Government would acquire upon payment of the judgment. The absence of this essential finding is not only itself reversible error (*United States* v. *Seminole Nation*, 299 U. S. 417, 422; *United States* v. *Esnault-Pelterie*, 299 U. S. 201, 205) but also exemplifies the inappropriateness of Tucker Act litigation for the resolution of the conflicting interests involved in air navigation.

The court below likewise failed to make any finding whether a permanent easement was taken or only an easement to use the land temporarily. The majority opinion states (R. 17) that the United States "appropriated this easement unto itself permanently, not temporarily". But the absence of an essential finding cannot be cured by statements in the opinion. *United States* v. *Seminole Nation*, 299 U. S. 417, 422; *United States* v.

Esnault-Pelterie, 299 U. S. 201, 205–206; *United States* v. *Wells*, 283 U. S. 102, 120–121.

Moreover, even if the court had made such a finding, it could not stand because of lack of evidentiary facts and of any evidence to support it. Finding 11 states (R. 10):

> There is no evidence of an intention to use or of an intention not to use the airport for its heavy bombers after the termination of defendant's lease, other than the fact that defendant has the right to renew its lease only until six months after the end of the present emergency or until June 30, 1967, whichever date is the earlier.

The majority opinion asserted that upon expiration of the lease "defendant no doubt intended to make some arrangement whereby it could use the airport for its military planes whenever it had occasion to do so" (R. 17). Plainly, liability cannot be rested upon such speculation which the court itself admits is not founded upon evidence. And the assumption is contradicted by the fact that the lease terminates six months after the end of the present emergency because, if the intention of permanent use had existed, a permanent arrangement would have been made rather than the temporary lease. As dissenting Judge Madden stated (R. 19), the Government "has been obliged to pay for a permanent right which it does not want and has no expectation of using."

4. The conclusion that "the value of the property destroyed and of the easement taken and the damage to plaintiffs' property resulting from the taking of this easement is the sum of $2,000.00"[3] (R. 18) is likewise unsupported by either evidentiary findings or by evidence. The characterization of the judgment as "in the nature of a jury verdict" makes no difference since a jury's verdict as to value must be within the range of testimony as to value. *United States* v. *685.2 Acres of Land in Lake County, Ill.*, 146 F. 2d 998 (C. C. A. 7).

There being no relevant evidentiary findings, the process the court used to arrive at its figure does not appear. The dissenting opinion indicates that it represented one-half of what the court concluded was fee value (R. 18). But since none of the witnesses testified that the tak-

[3] Plaintiffs' only evidence on this question was that fee value of the property was about $4,700 and that the fair value of loss of the chicken business was $1,000 (R. 25–26, 31–32, 38). This evidence neither indicates the value of the easement nor damages to remaining property resulting from taking of the easement. In rebuttal the Government introduced evidence that the fee value was between $2,500 and $2,885 (R. 81, 96–98, 113–114). The award cannot be justified by taking the difference between the plaintiffs' testimony and the Government's figures, because that difference represented simply the usual variation in expert valuations, and the Government's witnesses testified the airport hazard did not substantially affect market value (R. 89, 101). The court stated (Finding 12; R. 10) that plaintiffs' property "has depreciated in value" but gave no indication as to what evidence it thought supported the statement.

ing of such an easement would diminish the value of the land by one-half, the conclusion was not founded on evidence and cannot support the judgment. Inasmuch as the method of computation of the award is not given, it does not appear whether the award was restricted to the damage caused by Government planes flying over plaintiffs' property or whether it also included damage from planes of others or from Government planes flying over other property. Clearly, the Government is not liable to plaintiff for these latter damages. The fact is that Government traffic represented only about ⅓ of the total traffic at the airfield, that of this ⅓ only 10% represented heavy bombers, to which plaintiffs attributed the damage, and the runway near plaintiffs' property was only used 11% of the time (R. 7–8).

Again, Finding 14 refers to the value of property "that was destroyed" (R. 11). There is no finding that any property was destroyed unless it was the chicken business. In the opinion, the court recognized that plaintiffs are not entitled to recover damage to their business, but said they were entitled to recover "the special value of the land due to its adaptability for use for this business" (R. 18). There was no evidence that this property had a special value for such use. Plaintiffs' experts, rather than relying on such a special use, justified their valuations by reference to sales of neighboring lands (R. 25, 27–28, 30, 31).

They made no mention of a special value for a chicken business.

5. The issues raised by the instant case are of great general importance. The War Department alone administers some 847 airports which are either owned in fee or are operated under leases. Easements or the fee title to property have been acquired only so as to eliminate obstructions which exist within the path of glide computed on an angle of 40 to 1.[4] If the judgment of the court below is correct, rights of flight would have to be obtained extending far beyond the path of glide. The decision would relate likewise to operation by private airlines and airports and if followed elsewhere might vitally affect the development of all aviation operations. Reversal of the judgment would leave the problem to be resolved by measures apart from the concept of a taking of property.

CONCLUSION

The opinion below conflicts with that of the Circuit Court of Appeals for the Ninth Circuit in the *Hinman* case, which we believe to be correct. The questions are of real importance. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

NOVEMBER 1945.

[4] That is one foot of elevation for each 40 feet of horizontal travel measured from the end of the paved runway. Cf. note 1, p. 4, *supra*.

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Supreme Court, U. S.
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No. 630

In the Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, PETITIONER

v.

THOMAS LEE CAUSBY AND WIFE, TINIE CAUSBY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinions of the Court of Claims (R. 11–22) are reported in 60 F. Supp. 751.

JURISDICTION

The judgment of the Court of Claims was entered on June 4, 1945 (R. 22). A motion by the United States for a new trial was denied on October 1, 1945 (R. 22). The petition for a writ of certiorari was filed on November 29, 1945, and was granted on April 1, 1946 (R. 232). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939, 28 U. S. C. sec. 288 (b).

QUESTIONS PRESENTED

Effective June 1, 1942, the United States leased the Greensboro-High Point, North Carolina, Airport for one year with a right to renew until June 30, 1967, or six months after the end of the present national emergency, whichever should first occur. The lease gave the Government the right to use the airport for requirements of the War Department concurrently with the lessor and its tenants. The plaintiffs in the Court of Claims owned a parcel of land on which they lived and operated a chicken business, some 2,200 feet from the airport. Upon these facts the following questions are presented:

1. Whether the flight of aircraft over plaintiffs' land at a minimum elevation of 83 feet constituted a taking for which recovery may be had under the Tucker Act.

2. If so, whether the effect of the noise and lights of aircraft crossing above the land and the landowners' knowledge that airplane accidents have taken place at or in the vicinity of the airport may be considered in determining compensation to be paid for such taking.

3. Whether the Court of Claims erred in failing to specify what property interest was taken and whether such interest was permanent or temporary.

4. Whether the ultimate conclusion determining compensation to be $2,000 is supported by findings of fact and by substantial evidence.

STATEMENT

This action was brought by Thomas Causby and his wife to recover $7,035 for the alleged taking of their lands and for damages to their poultry business which was alleged to have resulted from the flight of War Department aircraft over their lands. The facts and the proceedings in the court below may be summarized as follows:

Since 1927 or 1928 there has been an airfield some eight miles from Greensboro, North Carolina (R. 5). During 1939, extensions were made to one or both of the runways of the airfield which run from northeast to southwest and from northwest to southeast and are 4,000 feet and 3,370 feet long, respectively (R. 5–6). In April 1942 the Greensboro-High Point Municipal Airport Authority, which now operates the airport, was activated pursuant to North Carolina statute (R. 5). On May 11, 1942, the Authority executed a lease to the United States for a term ending June 30, 1942, with a provision for renewals until June 30, 1967, or six months after the end of the present national emergency, whichever should first occur (R. 6). The lease gave the United States the right to use the airport "concurrently, jointly and in common with the Lessor and its tenants" (R. 218).

In 1934 the Causbys purchased 2.8 acres in a strip 100 feet wide and 1,200 feet long (R. 4–5). In 1937 improvements were completed consisting

of a six-room dwelling and various outbuildings principally used for a chicken farm (R. 4). The path of glide to the northwest-southeast runway passes directly over the Causby property, the end of the paved runway being 2,220 feet from their barn and 2,275 feet from their house (R. 8). Between the airfield and the Causby property are a 38.04 acre tract owned by the Government and three privately owned tracts comprising 74.62 acres (R. 46–7). The 30 to 1 safe glide angle approved by the Civil Aeronautics Authority passes over the Causby property at a minimum elevation of 83 feet, which is 67 feet above the dwelling, 63 feet above the barn and 18 feet above the highest tree (R. 8).[1]

Plaintiffs and their witnesses testified that while the civilian planes using the airport bothered them somewhat, use of the airport by the Army, particularly by heavy bombers, interfered with their sleep, etc., because of the noise and lights (R. 34–37, 52–53). Plaintiffs claimed that because of the effect of the noise and lights on the chickens, they were forced to go out of the poultry business (R. 38). They also claimed that uneasiness was produced from fear of ac-

[1] The court below described the 30 to 1 glide angle as follows (R. 12):

"This means that there must be no obstruction more than a foot high 30 feet from the end of the runway, and that the height of any obstruction must not exceed $\frac{1}{30}$ of its distance from the end of the runway." This angle of glide is supposed to be safe under the worst conditions."

cidents (R. 39–40, 46–47, 59). Plaintiffs claimed their property was uninhabitable but admitted that, except for a two-month period, they continued to live there (R. 41, 48, 55). The only evidence of value or damages presented by plaintiffs was that the fee value of the property was between $4,700 and $5,700 (R. 25–26, 31–32) and Causby's testimony that the fair value of the abandoned chicken business was $1,000 (R. 38). At least one of plaintiffs' experts admitted the land had increased in value by reason of the airport (R. 30).

The Government introduced evidence that the runway near plaintiffs' property was used only 4% of the time in taking off and 7% in landing (R. 7, 204–208). It also introduced data showing that all military traffic at the airfield represented about 1/3 or less of the entire traffic and that heavy four-motor bombers constituted only 10% of the military traffic (R. 7–8, 204–208). The details of four airplane accidents were given, from which it appeared that two fatal crashes had occurred one mile and two and one-half miles from the Causby property, respectively. The other two accidents were at the airport and consisted of a landing with the plane's wheels up and of an abortive take-off which did no damage either to the plane or to other property (R. 9, 209–213). These facts were incorporated by the court in its findings. In addition, Government experts valued plaintiffs' property between $2,500 and $2,885 (R.

81, 96–98, 113–114) and testified that the airport hazard did not substantially affect the market value (R. 89, 104).

After finding the facts above outlined as to location of the property, the history of the airport, and the use made of it by Army aircraft, the Court of Claims found (Findings 11–12; R. 9–10):

> Since the United States began operations about May 1942, its four-motored heavy Army and Navy bombers, the fighter and certain other planes of the heavier type, in taking off from and landing at this airport, have frequently passed over plaintiffs' property, their house, and chicken houses both day and night and, at times, in considerable numbers rather close together. They come close enough at times to appear to barely miss the tops of trees on the property and at times close enough to the tops of the trees to cause the old leaves on the trees to fly off. The noise so close to the buildings is startling and at night the glare from the planes brightly lights up the immediate area.
>
> The planes became more numerous after the Army began its operations and this situation has been continuous since that date. There is no evidence of an intention to use or of an intention not to use the airport for its heavy bombers after the termination of defendant's lease, other than the fact that defendant has the right to renew

its lease only until six months after the end of the present emergency or until June 30, 1967, whichever date is the earlier.

12. The result of this situation, together with knowledge of the accidents that have occurred, is that the plaintiffs and their family have become nervous and frightened. At night they are frequently deprived of sleep. The peace and comfort of their home are seriously interfered with. Their property, for the same reason, has depreciated in value.

After describing the effect of the planes upon the chickens, the court found (Findings 13–14; R. 10–11):

Plaintiffs finding themselves losing money gave up the chicken business. Chickens that had cost approximately $2.50 each to hatch and raise for production purposes were sold on the market for $1.50 each. This situation had destroyed the use of the property as a commercial chicken farm.

14. The value of plaintiffs' property that was destroyed and the value of the easement taken, together with the damage to the remainder of plaintiffs' property as a result of the taking of the easement, is $2,000.00.

The opinion of the court below stated that a property owner may prohibit any use of the air space above his land "that interferes with his right to light, air, view, or the safe and peaceful occupation and enjoyment of his land" (R. 14).

It held that the instant case is controlled by *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U. S. 327. It further held that the right to fly over the property at the stated heights had been taken permanently, not temporarily (R. 17). While recognizing that plaintiffs were not entitled to recover the damage to their business, the court concluded (R. 18):

> From all the testimony, we have concluded that the value of the property destroyed and of the easement taken and the damage to plaintiffs' property resulting from the taking of this easement is the sum of $2,000.00. A judgment in the nature of a jury verdict will be rendered for this amount.

Judge Madden dissented on three grounds. First, he took the view that there was no basis for the assumption that the Government's activities at the airport would be carried on permanently. Second, he expressed the opinion that the Government has the right, at least in wartime, to fly its planes through the air-space over an owner's lands when the flights are at a safe distance and no more frequent than in this case. Finally, he thought that, assuming that what the Government did was a legal wrong, there was no taking of plaintiffs' property.

On October 1, 1945, the Court denied the Government's motion for a new trial but added to Finding 14 (*supra*, p. 7) the statement (R. 22):

The date of the taking of the easement was June 1, 1942.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that property had been taken from the plaintiffs.

2. In holding that the damages caused by the noise of aircraft could be considered in determining compensation.

3. In holding that the damages resulting from lights of aircraft could be considered in determining compensation.

4. In holding that the damages claimed to have resulted from fear of aircraft accidents could be considered in determining compensation and in failing to find whether such fear was shared by the public generally, whether it was reasonable, and whether it affected market value.

5. In failing to define what property interest was taken.

6. In failing to find whether such interest was permanent or temporary.

7. In concluding that a permanent interest had been taken, in the absence of evidence to support such a conclusion.

8. In finding and concluding that compensation should be $2,000, in the absence of findings of fact and evidence to support the conclusion.

9. In awarding the value of property "de-

stroyed" without a finding that any property was destroyed.

10. In entering judgment against the United States.

SUMMARY OF ARGUMENT

I

The Government's flights over respondents' land have been 18 feet or more above the trees and improvements thereon. There has been no physical invasion of use of the land, nor has there been interference with any prospect of erection of structures or other use of the air space. For several reasons there cannot be liability under the Tucker Act.

A. Since the flights of aircraft conformed to the angle of glide approved for this airport by the Civil Aeronautics Authority, the area involved was within "navigable air space" in which Congress has recognized a public right of freedom of transit in air commerce. Air Commerce Act of 1926, 44 Stat. 568 as amended by the Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U. S. C. secs. 176 (a), 180, 403. These Acts were a valid exercise of the commerce powers of Congress and the use of such airspace cannot constitute a taking of property within the meaning of the Fifth Amendment, but, at most, there has been incidental damage as a consequence of authorized navigation.

B. The common law maxim that the owner of realty also owns the airspace above his land to

the periphery of the universe is not accurate. While the law as to ownership of airspace is not yet settled, we believe that the correct view is that such space is privately owned only to the extent that it is used by the erection of buildings or other structures. *Hinman* v. *Pacific Air Transport*, 84 F. 2d 755 (C. C. A. 9), certiorari denied, 300 U. S. 654; *Thrasher* v. *City of Atlanta*, 178 Ga. 514. The suggestion of some decisions that there is an arbitrary boundary of privately owned airspace seems unrealistic. In any event, if that boundary is marked by the limits that have been set by the legislature as the area of "navigable air space," that view would not support the decision below since the flights here were within the navigable airspace. Adaptation of the theory of the court below would result in the imposition of a serious financial burden on air transportation.

II

Since respondents were not making any use of the space through which the aircraft flew, the taking of such airspace was merely theoretical. The claim for substantial award rests entirely on the consequence of the noise and lights of the flights and the fear of accidents. For several reasons these elements cannot be considered in determining compensation, assuming that the Government has taken airspace owned by respondents.

A. Consequential damage which is an incidental result of lawful Government action cannot be the basis of compensation under the Fifth Amendment. It is well-settled that the noise, vibration and similar annoyances which result from the normal and non-negligent operation of a railroad and which do not cause special or peculiar damage to an individual different from that suffered by his neighbors is not compensable. *Richards* v. *Washington Terminal Co.*, 233 U. S. 546. For the same reason, similar damages from normal and non-negligent operation of aircraft is *damnum absque injuria*.

B. Even assuming that such damage from noise, lights and fear of accidents might be recovered against private operators, the liability would be in tort, for maintenance of a nuisance or commission of a trespass. Cf. *Delta Air Corporation* v. *Kersey*, 193 Ga. 862; *Smith* v. *New England Aircraft Co.*, 270 Mass. 511. Since the Tucker Act does not embrace tort claims, such damage is not recoverable against the United States.

C. The so-called "severance damage" rule does not justify the award of damages resulting from noise, lights and fear of accidents. The "severance damage" rule is that consideration can be given, in cases where a portion of a tract is taken, to the value arising out of the relation of the part taken to the entire tract. But this does not mean that all damages resulting from the use to which the portion taken is to be put may be con-

sidered. *High Bridge Lumber Company* v. *United States*, 69 Fed. 320 (C. C. A. 6); *Court of Marion County, W. Va.* v. *United States*, 53 C. Cls. 120, 140. It is clear that merely because a small portion of property of little value is taken, damages which would otherwise be consequential or constitute a tort claim, may not be considered in awarding compensation. *United States* v. *Willow River Power Co.*, 324 U. S. 499; *Danforth* v. *United States*, 308 U. S. 271; *Chicago, Burlington, Etc. R'd* v. *Chicago*, 166 U. S. 226. This view is confirmed by the rule that value is determined at the date of taking, since it would have been pure speculation to attempt to determine at that time the damage that might result from the noise and lights of the Government heavy bombers.

The fallacy of the view of "severance damage" taken by the court below appears from *United States* v. *Chicago, B. & Q. R. Co.*, 82 F. 2d 131 (C. C. A. 8); *United States* v. *Chicago, B. & Q. R. Co.*, 90 F. 2d 161 (C. C. A. 7); and *United States* v. *Wabasha-Nelson Bridge Co.*, 83 F. 2d 852 (C. C. A. 7), where the courts, taking a similar mistaken view of "severance damage", concluded that, in consequence, the words "or damaged" had been added to the Fifth Amendment of the Constitution. The fact that the severance rule, when so applied, means that compensation may be had when property is damaged as well as when it is taken, thus nullifying the principle denying recovery of consequential damages, demonstrates the

misinterpretation of the severance rule. The *Chicago, B. & Q.* and the *Wabasha-Nelson* opinion, all of which dealt with the taking of a portion of a railroad and road easements, represent a failure to appreciate the fact that when such easements are involved, the measure of the value of a segment that has been taken is the expense of restoring the property to its former serviceability. Similarly, when, as in *United States* v. *Grizzard*, 219 U. S. 180, access to land is cut off, the value of an easement of access is necessarily determined by reference to the depreciation in value resulting to the parcel it serves. That the Fifth Amendment has not been amended to require payment of consequential damages is apparent from *Campbell* v. *United States*, 266 U. S. 368, where this Court denied recovery for the damage resulting to the remaining portion of a tract of land of which a part was taken, resulting from the use to which lands taken from others for the same project would be put. So here respondents' damage does not result merely from the use of the airspace over their land but from the use of the space of other lands leading to the airfield.

D. In any event, damages from the alleged fear of accidents was not a proper consideration since there were neither findings nor evidence indicating an actual probability of such damage or a reasonable public apprehension thereof sufficient to affect market value.

III

The court below did not describe the property taken further than to refer to it as an "easement". Although the majority opinion concluded that a permanent easement was taken, no such finding was made.

A. It is reversible error for the Court of Claims to fail to make findings on all material issues. In this Tucker Act suit, it was essential that the nature of the easement be defined by giving particulars as to frequency of flight, permissible altitude, type of aircraft and the like. Moreover, since statements in the opinion cannot take the place of findings, the failure to specify whether a temporary or a permanent easement was taken was also reversible error.

B. Even if the court had found that a permanent easement was taken, such finding would be invalid for lack of evidence or findings of fact to support it. The court found that there was no evidence of an intention to use the airport after termination of the lease. Absent proof of an intention to use the airspace permanently, the court lacked jurisdiction to award compensation as for a permanent taking. Moreover, the facts contradict the existence of such an intention. The temporary lease was in accord with the Governmental policy during the war to take merely the temporary use and not permanent rights in property which would not be needed after the end of the war emergency.

IV

The process by which the Court arrived at its award of $2,000 does not appear. However, neither evidence nor findings of fact to support such an award are present. Evidence of both parties was directed at the fee value of the property. If the Government's taking was merely temporary, the proper measure of compensation, assuming that consideration can be given to the effects of the noise, lights and fear of accidents, would be the extent to which rental value was depreciated by the taking.

Even on the theory that there was a permanent taking, the evidence does not support the award since there was no indication as to the extent, if any, to which the fee value had been depreciated. In fact, the evidence indicated that fee value was greater at the time of trial than it was before the Government's activities commenced. Moreover, no attempt was made to limit the award to the effects of Government traffic over respondents' property. Certainly the Government is not obliged to compensate respondents for the effect of flights over other properties or of the effect of the aircraft of others than the Government. Activity of Government aircraft over respondents' property represented about 3% of the total activity at the field.

The loss of the poultry business, which respondents valued at $1,000, obviously cannot support the

$2,000 judgment. Moreover, the Government cannot be charged with liability for the loss of business, and there is no evidence indicating that respondents' land had a special adaptability to the chicken-raising business which enhanced its market value.

ARGUMENT

I

The Government did not take property of respondents in using the airspace over their land

The Civil Aeronautics Board's minimum angle of glide for aircraft passes over the Causby property at an elevation of 83 feet[*] (R. 8). This was 18 feet above the highest tree on respondents' property, 63 feet above their barn and 67 feet above their house. The Government aircraft were at least at this height when they flew over respondents' land. Thus there has been no physical invasion of respondents' property. Nor is there any indication of an intent of respondents to occupy this airspace by the erection of structures. We submit that the holding of the court below that nevertheless there was a taking of property for which the United States was liable under the Tucker Act was erroneous.

A. *Since the Federal Government has asserted control over the use of airspace by aircraft there*

[*] At least where, as here, there are no War Department regulations to the contrary. Army planes are subject to the rules of the Civil Aeronautics Board. *Cameron* v. *Civil Aeronautics Board*, 140 F. 2d 482 (C. C. A. 7), certiorari denied, 323 U. S. 716.

was no taking here.—In the Air Commerce Act of 1926, 44 Stat. 568, as amended by the Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U. S. C. secs. 171–245, 401–682, it was stated that "The United States of America is hereby declared to possess and exercise complete and exclusive national sovereignty in the air space over the United States" (49 U. S. C. sec. 176 (a)). "Navigable airspace" is defined as "airspace above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority, and such navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation" (49 U. S. C. sec. 180). It was also stated "There is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit in air commerce through the navigable air space of the United States" (49 U. S. C. sec. 403).[3]

[3] Air commerce is defined as including "any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce" (49 U. S. C. 401 (3)).

The Civil Aeronautics Board is authorized to prescribe "Air traffic rules governing the flight of, and for the navigation, protection, and identification of, aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between aircraft, and between aircraft and land or water vehicles." (49 U. S. C. 551 (a) (7)). "Aircraft" is defined as "any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air" (49 U. S. C. 401 (4)).

[4] The North Carolina statutes contain somewhat similar provisions. See Appendix, *infra*, p. 55.

Pursuant to the exercise by Congress of this control over air navigation, regulations were issued which provide generally for a minimum safe altitude of 1,000 feet over congested areas and 500 feet in other cases.[6] No general regulations for take-offs and landings were issued under the Acts, but the managers on the part of the House of Representatives at the joint conference on the air commerce statute had been cognizant that "the minimum safe altitudes of flight * * * would vary with the terrene and location of cities and would coincide with the surface of the land or water at airports." H. Rep. No. 1162, 69th Cong., 1st sess., p. 14. And in the instant case "The safe glide angle for planes landing or taking off at this airport, approved by the Civil Aeronautics Authority, is a 30 to 1 glide angle" (Finding 9, R. 8). The minimum altitudes of aircraft over respondents' property, following the approved glide angle, was 83 feet. Thus, the flight of the aircraft here involved was within the navigable airspace as defined by the statutes and regulations, and such flights were an exercise of the declared right of travel through that airspace.

It has been the general policy of the War Department to acquire avigation easements only when it is necessary to enter upon the land to remove obstacles that interfere with normal and safe

[6] 14 C. F. R. 60.35-60.354; 14 C. F. R. Cum. Supp. 60.35-60.355.

flying or to obtain agreements from the land owners that would prevent them from erecting structures or planting trees that would become a menace to flight safety." No such obstacle, either present or prospective, is involved here. As Mr. Justice Jackson stated in *Northwest Airlines v. Minnesota*, 322 U. S. 292, 303: "Air as an element in which to navigate is even more inevitably federalized by the commerce clause than is navigable water." We submit that the statute above cited were a proper exercise of the commerce powers of Congress (*Smith v. New England Aircraft Co.*, 270 Mass. 511, 520–521, 525–526; *Neiswonger v. Goodyear Tire & Rubber Co.*, 35 F. 2d 761 (N.D. Ohio)), and that when, as here, flights are made within the navigable airspace without any physical invasion of the property of landowners, there has been no taking of property but merely incidental damage occurring as

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Congress was aware that it was exercising the commerce power in enacting the statutes. As stated in H. Rep. No. 572, 89th Cong., 1st sess., p. 10: "The declaration of what constitutes navigable air space is an exercise of the same source of power, the inter-state commerce clause, as that under which Congress has long declared in many acts what constitute navigable or nonnavigable waters. The public right of flight in the navigable air space owes its source to the same constitutional basis which, under decisions of the Supreme Court, has given rise to a public easement of navigation in the navigable waters of the United States, regardless of the ownership of the adjacent or subjacent soil.

"The whole framework and, in many cases, the very language of the bill may fairly be said to be merely the applica-

a consequence of authorized air navigation. Cf. *United States* v. *Causby*, 328 U. S. 256; *United States* v. *Chicago, M., St. P. & P. R. Co.*, 312 U. S. 592, 596–598; *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53, 62, 69; *Greenleaf Lumber Co.* v. *Garrison*, 237 U. S. 251, 265; *Baetjer* v. *United States*, 62 Ct. Cl. 77, certiorari denied, 273 U. S. 751.

B. *Respondents did not own the air space over their land.*—It was often stated, at common law, that the ownership of land extended to the periphery of the universe, and this was expressed in the maxim "*Cujus est solum ejus est usque ad coelum*". However, it has been generally agreed since the development of air navigation that this is not true. As Mr. Justice Jackson stated in

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[illegible] to the transportation of property and [illegible] principle of law long established to [illegible] transportation.

The legislative history also [illegible] recognizing the similarity between air and water [illegible] S. Rep. No. 2-[illegible], 69th Cong., 1st sess., p. 3; H. Rep. No. [illegible], 69th Cong., 1st sess., pp. 9–10.

Military and naval aircraft were intended to be subject to the air traffic rules. H. Rep. No. 572, 69th Cong., 1st sess., p. 5; H. Rep. No. 1162, 69th Cong., 1st sess., p. 12; and in order to protect interstate and foreign air commerce by air traffic rules, it was made to apply whether the aircraft engaged in "commercial or noncommercial or in foreign, interstate or intrastate navigation of the United States, irrespective of whether the aircraft is registered or is navigating in [illegible] waters." H. Rep. No. 1162, 69th Cong., 1st sess., p. 12; see also 67 Cong. Rec. [illegible].

The discussion in *Swetland* v. *Curtiss Airport Corp.*, [illegible] 41 F. 2d 929, 931 (N. D. Ohio), modified, [illegible] F. 2d 201

his concurring opinion in *Northwest Airlines* v. *Minnesota*, 322 U. S. 292, 302–303:

> The ancient idea that landlordism and sovereignty extend from the center of the world to the periphery of the universe has been modified. Today the landowner no more possesses a vertical control of all the air above him than a shore owner possess horizontal control of all the sea before him. The air is too precious as an open highway to permit it to be "owned" to the exclusion or embarrassment of air navigation by surface landlords who could put it to little real use.

See *Southard* v. *Curtiss Airports Corporation*, 11 F. 2d 929, 934–936 (N. D. Ohio), 55 F. 2d 201, 203 (C. C. A. 6).

The decision in *Portsmouth Harbor Land & Hotel Co.* v. *United States*, 260 U. S. 327, is not, as the court below thought (R. 14–16), controlling here. The right to use airspace for planes and similar purposes without any physical interference with surface uses was not involved nor was it discussed in the opinion. The allegations of the complaint in that case, which were held to be sufficient, claimed that there had been a taking

(C. C. A. 6) is, we believe, based on the erroneous notion that airspace conforming to the safe glide angle is not navigable airspace. Cf. *Smith* v. *New England Aircraft Co. Inc.*, 270 Mass. 511, 526–528.

of the land by the firing of projectiles over it." The Court applied (260 U. S. at p. 329) the principles established in the predecessor case of *Peabody* v. *United States*, 231 U. S. 530. There the Court cited only the decisions in *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166, *United States* v. *Lynah*, 188 U. S. 445, and *United States* v. *Welch*, 217 U. S. 333, to support the proposition that subjection of land in time of peace to the burden of governmental use by firing projectiles at will over it "might well be considered to be a 'taking'" (231 U. S. at p. 538). Thus, the *Portsmouth* case was simply another application of the view established in the *Pumpelly*, *Lynah* and *Welch* cases in all of which the plaintiffs' lands had been permanently flooded, that the destruction of all uses for property constitutes a taking.

The court below held that "there can be no doubt that today a landowner owns the air-space above his land as completely as he does the land itself or the minerals beneath it, at least insofar as it is necessary for his full and complete enjoyment of the land itself" (R. 14). Thus, the court has held, in effect, that the landowner can recover as for a taking, on account of any sub-

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* After remand the claimant was unable to prove a case, the petition was dismissed (*Portsmouth Harbor Land & Hotel Co.* v. *United States*, 64 C. Cls. 572), and certiorari was denied, *Portsmouth Harbor Land & Hotel Co.* v. *United States*, 277 U. S. 603.

stantial injury caused by aircraft, regardless of the altitude of flight. While purporting to recognize that the common law doctrine "has received substantial modification" (R. 13), the court has applied the alleged rule of the common law, viz., that the landowner can recover for any substantial damage resulting from invasion of the airspace which he owns. We submit that the decisions thereon demonstrate the error of the court below.

In *Hinman* v. *Pacific Air Transport*, 84 F. 2d 755 (C. C. A. 9), certiorari denied, 300 U. S. 654, the court held that the flight of aircraft over land even as low as five feet without interfering with the use of it, was not a trespass. It also stated that it was not legally possible to obtain an easement for use of such airspace by prescription. The court analyzed the rights in airspace as follows (84 F. 2d at p. 758):

> The air, like the sea, is by its nature incapable of private ownership, except in so far as one may actually use it. This principle was announced long ago by Justinian. It is in fact the basis upon which practically all of our so-called water codes are based.
>
> We own so much of the space above the ground as we can occupy or make use of, in connection with the enjoyment of our land. This right is not fixed. It varies with our varying needs and is coextensive with them. The owner of land owns as much of the space above him as he uses.

but only so long as he uses it. All that lies beyond belongs to the world.

When it is said that man owns, or may own, to the heavens, that merely means that no one can acquire a right to the space above him that will limit him in whatever use he can make of it as a part of his enjoyment of the land. To this extent his title to the air is paramount. No other person can acquire any title or exclusive right to any space above him.

Any use of such air or space by others which is injurious to his land, or which constitutes an actual interference with his possession or his beneficial use thereof, would be a trespass for which he would have remedy. But any claim of the landowner beyond this cannot find a precedent in law, nor support in reason.

So here, there has been no physical interference with respondents' possession nor with their use of

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Subsequently, the landowners erected "spite" structures which interfered with normal use of the airfield. The district court enjoined the maintenance of such structures subject, however, to the right of the landowners to show that the erection of structures in excess of height limitations of the injunction was necessary to good faith beneficial use of the property. *United States v. Hinson* (S. D. Calif., 1938), 1940 U. S. Aviation Reports 1. The erection of "spite" structures was similarly enjoined in *Commonwealth v. Vogt-Bostedt*, 30 Pa. Dist. & C. Rep. 137, 1937 U. S. Aviation Reports 1 (Ct. Com. Pl. Dauphin Co., Pa.); *Tuckey v. Iowa City*, 1936 U. S. Av. Rep. 10 (Dist. Ct. Johnson Co., Ia.); see Rhyne, *Airports and the Courts* (Nat. Inst. of Municipal Law Officers, 1944).

the property but simply incidental damage resulting from the noise and lights.

The Supreme Court of Georgia also adopted the view that there are no property rights in unappropriated airspace in *Thrasher* v. *City of Atlanta*, 178 Ga. 514, 528, 531. This was an action to enjoin the operation of an airport as a nuisance, because of the noise created there, the dust blown on plaintiff's property, the danger from falling aircraft and the annoyance of low flights by airplanes above a home. Plaintiff's bill was dismissed on demurrer in the lower court, but this ruling was reversed by the Supreme Court of Georgia on the ground that a cause of action was stated in regard to the blowing of dust which, if was alleged, was not essential to operation of the airport and could be controlled. Because of state statutes which in effect adopted the principle of the common law maxim regarding property rights above the surface of the earth, the court gave an extended discussion of this question. It stated that the maxim was based in a large measure on obiter dicta and that the literal terms of the statute must be discounted or qualified in like measure, adding (178 Ga. at pp. 529–530):

> But the space is up there, and the owner of the land has the first claim upon it. If another should capture and possess it, as by erecting a high building with a fixed overhanging structure, this alone will show that

> the space affected is capable of being possessed, and consequently the owner of the soil beneath the overhanging structure may be entitled to ejectment or to an action for trespass. However, the pilot of an airplane does not seize and hold the space or stratum of air through which he navigates, and can not do so. He is merely a transient, and the use to which he applies the ethereal realm does not partake of the nature of occupation in the sense of dominion and ownership. So long as the space through which he moves is beyond the reasonable possibility of possession by the occupant below, he is in free territory,—not as every or any man's land, but rather as a sort of "no man's land." As stated above, however, the occupant of the soil is entitled to be free from danger or annoyance by any use of the superincumbent space, and for any infringement of this right he may apply to the law for appropriate redress or relief.

The reasoning of these opinions, that a landowner does not own superadjacent airspace which he has not subjected to possession by the erection of structures or other occupancy, is, we submit, correct. There are, it is true, decisions which suggest that ownership of airspace extends to some particular elevation. The figure chosen is usually 500 feet because that has been established by legislation as the minimum safe altitude over non-congested areas. *Smith* v. *New England Air-*

Craft Co., 270 Mass. 511; *Burnham* v. *Beverly Airways*, 311 Mass. 628; *Delta Air Corporation* v. *Kersey*, 193 Ga. 862, 869. To accept such legislation as establishing the boundary of airspace which is privately owned seems unrealistic since in many cases in the large cities, space above 500 feet has actually been occupied by buildings while in most of the country, as here, occupancy does not extend above approximately forty or fifty feet. In any event, the reasoning of those decisions would support the view that respondents did not own the airspace here involved since all flights conformed to within the minimum safe angle of flight.

Acceptance of the holding of the court below would present problems which would seriously affect the rapidly expanding air transportation business. As stated by Rhyne, *Airports and the Courts* (Nat. Inst. of Mun. Law Officers, 1944), p. 164:

> The protection of airport approaches from dangerous obstructions offers one of the most pressing of current airport legal problems. With the great increase in size and number of airplanes, and the advent of instrument landing, the need for either large airports or removal of obstructions surrounding airports is growing all the time. The rate of climb and rate of descent of larger airplanes and planes using instrument landing facilities is naturally less than that of light planes and the air-

> craft in common use several years ago. The problem of purchasing additional land to enlarge existing airports raises almost insurmountable financial objections, and the answer to the need for more space in which to land and take off from airports has been sought in the use of the police power to control the height of structures on property adjoining the airport.

Adoption by this Court of the theory of the court below would result in imposition of an extremely serious financial burden on the transportation

Cf. *United States* v. *55.23 Acres of Land, Etc.*, 55 F. Supp. 461 (W. D. La.).

II

Even if the Government took from respondents air space owned by them, the damages resulting from noise, lights and fear of accidents cannot be considered in assessing compensation for such a taking.

Respondents were not making any use of the airspace traversed by the Government's aircraft. Such flights did not cause any physical damage to their property. The most that was done was to blow dead leaves from the trees (R. 10). Thus,

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[1] In their brief in opposition (pp. 4-5), respondents assert that the planes clipped the trees and that they traveled much nearer the land than 83 feet. But the court, after finding that the minimum glide angle passed over respondents' property 18 feet above the top of the highest (65-foot) tree, stated that not infrequently planes passed over "at approximately these heights." (Finding 9, R. 8-9; see also R. 19.) Moreover, military aircraft invariably did not land or take off beyond the paved runway, so that the safe glide angle was always observed (R. 141-142, 143, 144-145, 150-151, 216).

any taking of the airspace was merely theoretical, producing no damage. Cf. *Marion &c. Ry.* v. *United States*, 270 U. S. 280; *United States* v. *357.25 Acres of Land, Etc.*, 55 F. Supp. 461 (W. D. La.). The claim for substantial compensation is based entirely on the consequences to respondents and their poultry of the noise and the lights of the planes and on the fear of accidents. For several reasons, we submit that these elements cannot be considered in determining the compensation payable under the Fifth Amendment.

A. *Damages resulting from noise, lights and fear of accidents is damnum absque injuria.*—It is well settled that damages which are the incidental result of lawful Government action are consequential and do not constitute a taking for which compensation may be secured under the Fifth Amendment. *Bedford* v. *United States*, 192 U. S. 217; *Manigault* v. *Springs*, 199 U. S. 473; *Jackson* v. *United States*, 230 U. S. 1; *Hughes* v. *United States*, 230 U. S. 24; *Cubbins* v. *Mississippi River Comm'n*, 241 U. S. 351; *Sanguinetti* v. *United States*, 264 U. S. 146. The damages claimed here are, we submit, of this nature. As Judge Madden pointed out (R. 19–20), an apt analogy may be found in the decisions denying recovery for damages resulting from the noise, vibrations, smoke and the like, incidental to the operations of railroads. In *Richards* v. *Washing-*

ton Terminal Co., 233 U. S. 546, this Court held that liability existed for the damage resulting from gases and smoke from railroad engines while in a tunnel since, by a fanning system, they were emitted over plaintiff's property. But recovery was denied for damages resulting from normal operation of the railroad. This Court said (p. 554):

> Any diminution of the value of property not directly invaded nor peculiarly affected, but sharing in the common burden of incidental damages arising from the legalized nuisance, is held not to be a "taking" within the constitutional provision. The immunity is limited to such damages as naturally and unavoidably result from the proper conduct of the road and are shared generally by property owners whose lands lie within range of the inconveniences necessarily incident to proximity to a railroad. It includes the noises and vibrations incident to the running of trains, the necessary emission of smoke and sparks from the locomotives, and similar annoyances inseparable from the normal and non-negligent operation of a railroad. *Transportation Co.* v. *Chicago*, 99 U. S. 635, 641; *Beseman* v. *Pennsylvania R. R. Co.*, 50 N. J. L. 235, 240; affirmed 52 N. J. L. 221."

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[11] See also *Pennsylvania Rr Co.* v. *Price*, 241 Fed. 250 (C. C. A. 3); *Roman Catholic Church of St. Anthony of Padua* v. *Pennsylvania R. Co.*, 207 Fed. 897 (C. C. A. 3); *Fink* v. *Cleveland C. C. & St. L. Ry. Co.*, 181 Ind. 539;

Thus, liability is limited to the special and peculiar damage that may result to the particular property owner. After recognizing that many states had amended their constitutional provisions to provide that private property shall not be taken *or damaged*, for public use without compensation, it was stated (pp. 554–555):

> "The immunity from liability for incidental injuries is attended with a considerable degree of hardship to the private land owner, and has not been adopted without some judicial protest. But, as pointed out by Chief Justice Beasley in the *Beseman* Case, 30 N. J. Law at p. 238, if railroad companies were liable to suit for such damages upon the theory that with respect to them the company is a tort-feasor, the practical result would be to bring the operation of railroads to a standstill. * * *"

In the instant case, respondents have not suffered any special or peculiar damage different from that of other property owners in the vicinity of the airfield. The noise from the heavy bombers would be largely the same if, rather than flying over the Causby strip, the planes had flown

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Atchison T. & S. F. Ry Co. v. *Armstrong*, 71 Kan. 366; *Chesapeake & Ohio Ry. Co.* v. *Scott*, 197 Ky. 636; *Mayor & Council of City of Baltimore* v. *Himmelfarb*, 192 Atl. 595 (Md.); *Epworth* v. *Ludington & N. Ry.*, 236 Mich. 565; *Robertson* v. *New Orleans & G. N. R. Co.*, 158 Miss. 24; *Ball* v. *New York C. R. Co.*, 229 N. Y. 33; Orgel, *Valuation Under Eminent Domain* (1936) fn. 26, pp. 20–22.

over neighboring lands. The noise is simply an incident to normal take-offs and landings at the airfield. The danger of accidents which might affect respondents' lands was no greater than the danger to which other lands in the vicinity might be subject. We submit that no reason can be given why aircraft operators should be subject to liability for such annoyances as result from their legally authorized operations any more than are those who operate railroads and highways. Cf. *Smith* v. *New England Aircraft Co.*, 270 Mass. 511; *Delta Air Corp.* v. *Kersey*, 193 Ga. 862; *United States* v. *357.25 Acres of Land, Etc.*, 55 F. Supp. 461 (W. D. La.); *Warren Township School Dist. No. 7, Etc.* v. *City of Detroit*, 308 Mich. 460, 478.

It has been said that "destruction is tantamount to taking" or that "Governmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking", *United States* v. *General Motors Corp.*, 323 U. S. 373, 378, 384. While the Causbys alleged that their property had become uninhabitable (R. 3), they were living there at the time of trial (R. 34, 38, 41) and there were no vacant houses in the vicinity (R. 102, 181–182, 190, 193). The Court of Claims clearly did not accept the contention that the property had been rendered useless since

it made no such finding and did not award fee value (see *infra*, pp. 50–52; cf. Br. in Opp., p. 6). Thus, the most that can be said is that respondents suffered some damage from noise, lights and fear of accidents. Such damage has never been held to be a taking within the meaning of the Fifth Amendment.[12]

B. *Respondents' claim sounds in tort.*—In view of the cases dealing with the normal operation of railroads, *supra*, pp. 31–32, we believe that the damage from noise, lights and fear of accidents caused by authorized flight of aircraft should not be recoverable from private operators. *Delta Air Corporation* v. *Kersey*, 193 Ga. 862, 867–868; *Smith* v. *New England Aircraft Co.*, 270 Mass. 511, 523–524; *Pickering* v. *Rudd*, 4 Comp. 219, 221, 171 Eng. Repr. 70; Burdick, *Law of Torts* (4th ed. 1926) p. 406. But assuming to the contrary that the private operators could be charged, the liability would be in tort for the maintenance of a nuisance or the commission of

[12] This Court has stated that *Pumpelly* v. *Green Bay*, 13 Wall. 166, which holds that there was a taking when lands were completely flooded so as to destroy their value, thus effecting a practical ouster of possession, was the "extremest qualification" of the doctrine that acts done in proper exercise of governmental powers and not directly encroaching upon private property, though the consequences may impair its use, are universally held not to be a taking. *Transportation Co.* v. *Chicago*, 99 U. S. 635, 642; *Sanders* v. *Atlantic Coast Line R. R.*, 216 N. C. 312, 315; cf. *United States* v. *Spanenburger*, 308 U. S. 256, 265; *Bracburn Alloy Steel Corp.* v. *United States*, 95 C. Cls., 343, 356.

a trespass. *Idem.* The jurisdiction of the Court of Claims embraces only cases "not sounding in tort". Judicial Code, sec. 145, 28 U. S. C. sec. 250. Hence, we submit, the court below had no jurisdiction of respondents' claim for damages. 3 Comp. Gen. 234; cf. *Schillinger* v. *United States*, 155 U. S. 163; *Sanguinetti* v. *United States*, 264 U. S. 146, 150; *Keokuk & Hamilton Bridge Co.* v. *United States*, 260 U. S. 125; *Horstmann Co.* v. *United States*, 257 U. S. 138; *Mills* v. *United States*, 46 Fed. 738 (S. D. Ga.); *Southern Pacific Co.* v. *United States*, 266 U. S. 586, affirming 58 C. Cls. 428.

C. *The so-called "severance damage" rule does not justify the award of damages resulting from noise, lights and fear of accidents.*—Having concluded that respondents owned the airspace above their property and that the assertion of the right to traverse it was a taking, the court below justified the award of damages on the theory that when a portion of a single unit of property is taken, "it is well settled that a plaintiff may recover not only the value of the part of his land which has been taken, but also the damage to the remainder resulting from the taking of a part of it" (R. 16). This holding constituted, we submit, a misapprehension as to the meaning of the rule.

In *United States* v. *Miller*, 317 U. S. 369, 376, this Court stated: "If only a portion of a single

tract is taken, the owner's compensation for that taking includes any element of value arising out of the relation of the part taken to the entire tract. Such damage is often, though somewhat loosely, spoken of as "severance damage." In *Bauman* v. *Ross*, 167 U. S. 548, 574, it was said: "When the part not taken is left in such shape or condition, as to be in itself of less value than before, the owner is entitled to additional damages on that account." Thus, the rule is that consideration can be given to the fact that the severance of part of the entire tract leaves the remainder so small or in such a physical location that its usefulness is impaired. It does not mean that if there has been a taking of some property interest, damages which would otherwise be consequential can be recovered. Many decisions make it clear that this latter conclusion does not follow. In *United States* v. *Willow River Power Co.*, 324 U. S. 499, the water level had been raised above high-water mark and nominal damage was done "to land as land or structures as such" but that did not authorize recovery of power value.

In *Richards* v. *Washington Terminal Co.*, 233 U. S. 546, *supra*, pp. 31–32, the fact that recovery was granted for the special damage resulting from the forcing of smoke from the tunnel over plaintiffs' land did not authorize the recovery of damages resulting from normal operation of the trains.

See also *Danforth* v. *United States*, 308 U. S. 271, 286; *Campbell* v. *United States*, 266 U. S. 368; *Chicago, Burlington, Etc. R'd* v. *Chicago*, 166 U. S. 226; *Coleman* v. *United States*, 181 Fed. 599 (C. C. N. D. Ala.), cited in *Sanguinetti* v. *United States*, 264 U. S. 146, 150; Orgel, *Valuation Under Eminent Domain* (1936) sec. 53, pp. 176–177. And in *United States* v. *Meyer*, 113 F. 2d 387, 398 (C. C. A. 7), certiorari denied, 311 U. S. 706, the United States condemned land for the improvement of the Mississippi River. The court, nevertheless, sustained the exclusion of evidence of damages resulting from saturation, stating "Whatever defendants' remedy may be in other forms of action an interference with the subsurface drainage is not within taking under the eminent domain power." A similar conclusion was reached in *High Bridge Lumber Company* v. *United States*, 69 Fed. 320 (C. C. A. 6), where the court excluded from consideration anticipated damages to the owner's remaining land consequent upon the use to which the condemned parcel was to be put. In *Court of Marion County, W. Va.* v. *United States*, 53 C. Cls. 120, 140, the court after referring to *Bauman* v. *Ross*, 167 U. S. 548, and *United States* v. *Grizzard*, 219 U. S. 180, concluded:

> The cause of the damage to the remainder of the tract, the use to which that taken is to be put, is a cause which is entirely in-

> dependent of the mere depriving of the owner of the possession and enjoyment of the land taken and does not come within the usual rule in condemnations that the value of the land taken is to be determined by its value as a part of the entire tract.

This view is confirmed by the well-settled rule that value is determined at the date of taking. *United States* v. *Miller*, 317 U. S. 369; *Danforth* v. *United States*, 308 U. S. 271. The court below held that the date of taking here was June 1, 1942 (R. 11) which was the date of commencement of the lease (R. 6). We believe that this date is correct, for no other definite time is shown which could, with any reason, be selected as the date of taking, if there was a taking. But the damages of which respondents complain all occurred later. Since the claim is based upon the effect of heavy bombers, whether there was any damage depended upon the manner and extent to which such aircraft should use the field, if at all. Plainly, it would be pure speculation to attempt to determine these matters at the date of taking.

These considerations make it clear that respondents' claim is in essence for damages and not for a taking of property. The "severance damage" rule is not, we submit, a device whereby liability for damages can be imposed upon the Government in the guise of compensation for a taking. That such is the result of the holding below was expressly recognized in *United States*

v. *Chicago, B. & Q. R. Co.*, 82 F. 2d 131, 139 (C. C. A. 8), certiorari denied, 298 U. S. 689, where the court, taking a similar theory of "severance damage", reached the conclusion that "As already forecast, to the word 'taking' there has now been added by almost unanimous decision, bottomed on changes in the organic law, or by statutes, or by judicial interpretation in the later cases, the words 'or damaged'." See also *United States* v. *Chicago, B. & Q. R. Co.*, 90 F. 2d 161 (C. C. A. 7), certiorari denied, 302 U. S. 711; *United States* v. *Wabasha-Nelson Bridge Co.*, 83 F. 2d 852 (C. C. A. 7). This theory, that the Fifth Amendment has, by judicial interpretation, been expanded to require the payment of compensation when property is damaged as well as when it is taken, as under amendments to some state constitutions, is plainly erroneous. If this view were accepted it would effectively destroy the long-established rule that consequential damages may not be recovered. But this theory is the necessary result of a conclusion that "severance damage" means that if some small portion of property, even if of only nominal value, is taken, all damages including those which are a consequence of the Government's use of the property after the taking are recoverable. The later decision in *United States* v. *Meyer*, 113 F. 2d 387

[13] See *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 281–283.

(C. C. A. 7), indicates that the Circuit Court of Appeals for the Seventh Circuit recognized the error of the reasoning in the *Wabasha-Nelson* and *Chicago, B. & Q.* opinions.

This error arose from the failure to apply language in the opinion in *United States* v. *Grizzard*, 219 U. S. 180, to the factual problem involved. See *United States* v. *Chicago, B. & Q. R. Co.*, 82 F. 2d 131, 135–136 (C. C. A. 8). In the *Grizzard* case the flooding of a portion of the tract had closed a public road rendering access to the remainder inconvenient. It was in this connection that the opinion stated that damage to the remainder could be recovered "embracing, of course, injury due to the use to which the part appropriated is to be devoted" (219 U. S. at p. 183). This reference to use was simply stating that destruction of access was the result of the flooding. The Court had previously stated, "An incident of that flooding is that a public road running across the flooded land is also flooded. But if this were not so, and the roadway had simply been cut off by the interposition of the flooded portion of the farm, the damage would be the same". (*Ibid.*) The damage would also have been the same if the access had been cut off by a structure or a fence rather than by flooding. Thus, the Court was not discussing consequential damage resulting from the flooding such as erosion or saturation. Because of its nature, the value of an easement of access is necessarily determined by reference to the depreciation in value

resulting to the parcel which it serves or, if public roads are being valued, by the expense of restoring them to their former serviceability if that is necessary.[14] So also when, as in the *Chicago, B. & Q.* and the *Wabasha-Nelson Bridge* cases, *supra*, a segment of a road or railroad easement is taken, the cost of restoring the easement to its former serviceability is a proper measure when, as in the case of a main-line railroad, the damage otherwise would exceed the cost of restoration. That the *Grizzard* case does not support the decision below is apparent from the fact that it cites (219 U. S. at p. 185) *High Bridge Lumber Co.* v. *United States*, 69 Fed. 320 (C. C. A. 6.) (both opinions being written by Justice Lurton), one of the cases holding that while impairment of value to the remainder by reason of the relation of the part taken to the remainder may be considered, anticipated damages to the remainder consequent upon the use to which the condemned parcel is to be put may not enter into the award.[15]

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[14] *Schiefelbein* v. *United States*, 124 F. 2d 945 (C. C. A. 8); *Mayor and City Council of Baltimore* v. *United States*, 147 F. 2d 786 (C. C. A. 4); *United States* v. *Des Moines County*, 148 F. 2d 448 (C. C. A. 8); cf. *United States ex rel. T. V. A.* v. *Welch*, October Term, 1945, Nos. 528–533, decided March 25, 1946; *United States* v. *Certain Parcels of Land in City of Spokane*, 45 F. Supp. 899 (E. D. Wash.); *City of Little Falls* v. *State of New York*, 198 App. Div. 488; *Matter of City of New York (Public Beach)*, 269 N. Y. 64.

[15] Similarly, while there is language in *Sharp* v. *United States*, 191 U. S. 341, that might be construed to mean that damages resulting from the use to which the Government

The decision in *Campbell* v. *United States*, 266 U. S. 368, 371, reveals that the *Grizzard* case does not have the broad meaning given to it by the court below (R. 16). In the *Campbell* case land was taken as part of a site for a plant for the production of nitrates. An award was made of $750 for the land taken and $2,250 for damage to the remainder of the property by the taking. Since the Government did not appeal, no question was raised as to the correctness of this award. The landowner appealed from the denial of his claim that, by reason of the uses to be made of lands acquired from others for the same project, his remaining lands were damaged. This damage resulted chiefly from the probability that the tract would be sold and used for industrial purposes. This Court sustained the denial of the claim, stating that (p. 371) "The proposed use of the lands taken from others did not constitute a taking of his property." Thus, consequential damages were excluded even though some property had been taken. The case is, we submit, controlling here, since the Causbys' damage did not result simply from the taking of their airspace but from the acquisition of the right to use the airfield and from the use of airspace of neighboring lands.[16]

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might put the property was recoverable, the opinion in its discussion of three illustrations (pp. 355–356) makes it clear that the Court was not passing on the question.

[16] Since the only issue in this Court related to the damages resulting from the use of lands acquired from others, it

The absurdity of the "severance damage" rule, as applied by the court below, is well-illustrated by the facts of the instant case. It is, at best, doubtful whether any property was taken. In any event, the airspace above 83 feet had no value and the alleged taking of the easement could not sustain the jurisdiction of the Court of Claims, which does not extend to awards of nominal damages. *Marion & c Ry.* v. *United States*, 270 U. S. 280, 282. Yet, since it found that some property was taken, the court below proceeded to award a judgment approaching half the value of the property (see *infra*, pp. 49–50). No better example could be found of the fact that acceptance of this "severance damage" theory would, in practical application, nullify the well-settled rules excluding from consideration consequential damages such as business losses.

D. *In any event, the fear of accidents was not a proper consideration.*—Respondents put emphasis on their alleged fear of accidents, and in Finding 10 the Court of Claims described the four accidents that had occurred in the vicinity (R. 9). Finding 12 (R. 10) indicates that the court gave consideration to this fear in reaching its conclusion (see also R. 12). However, the court made no finding that there was actually a probability of damage to respondents' property

cannot be assumed that the *Campbell* decision would justify an award of damages resulting from the use of the parcel taken as distinguished from the depreciation in value to the remainder caused by the taking itself.

or even that there was a reasonable public apprehension thereof which would depreciate market value. Two of these "accidents" occurred at the airport and consisted of a landing with the plane's wheels up and of an abortive take-off which did no damage either to the plane or to other property (R. 9, 209–213). Of the other two accidents, the closest occurred a mile from respondents' property (R. 9). Such fear of accidents was too speculative and conjectural to be considered in awarding compensation. *Miller* v. *United States*, 137 F. 2d 592 (C. C. A. 3); *Meriden* v. *Zwalniski*, 88 Conn. 427, 433–434; cf. *Chicago, B. & Q. R. Co.* v. *Gelvin*, 238 Fed. 14, 24–25 (C. C. A. 8).

III

The judgment below is invalid for lack of a finding as to what property interest was taken and whether it was temporary or permanent

The Court of Claims did not in its findings specify what property interest had been taken by the Government. Finding 14 referred to the "easement taken" and stated that the date of taking "of the easement" was June 1, 1942 (R. 11). No attempt was made to specify either a minimum permissible altitude of flight, the type of aircraft which might be flown over the land, or the frequency of flight. In Finding 11 it is stated (R. 10):

> The planes became more numerous after the Army began its operations and this situation has been continuous since that date. There is no evidence of an intention to use or of an intention not to use the airport for its heavy bombers after the termination of defendant's lease, other than the fact that defendant has the right to renew its lease only until six months after the end of the present emergency or until June 30, 1967, whichever date is the earlier.

The majority opinion, however, took the view that a permanent easement had been taken (R. 17), Judge Madden dissenting on this question *inter alia* (R. 18–19). We submit that, for several reasons, the judgment lacks both the findings and the evidence necessary to support it.

A. *Essential findings as to the nature of the property taken were not made by the court below.*—The term "easement" is not a word of art which without further specification precisely describes the rights concerned, as is the term "fee simple". For example, there are many types of easements to overflow land ranging from an easement to flood permanently to an easement to flood once in a hundred years. Thus, the term "easement of overflow" is by itself obviously too indefinite to describe a particular property interest. Cf. *Karlson* v. *United States,* 82 F. 2d 330, 333–336 (C. C. A. 8); *Smith* v. *New England Aircraft Co.,* 270 Mass. 511, 531; *Thompson* v. *Umberger,*

221 N. C. 178. Here the court below has simply referred to the interest taken as an "easement" (R. 11). Obviously, it meant easement of flight of aircraft. But, we submit, this description is meaningless when no particulars as to frequency of flight, permissible altitude, or type of aircraft are given.

A specification of the property interest taken is clearly essential in this Tucker Act suit based upon the alleged taking of property. Such description is a prerequisite to an intelligent valuation of the interest taken. And, since if there is a taking, the Government is vested with title to the property taken (*United States* v. *Lynah*, 188 U. S. 445, 470; *United States* v. *Cress*, 243 U. S. 316, 328–329), a precise description of such property is necessary: It is the duty of the Court of Claims to make findings on all material issues; hence its failure to specify the nature of the easement it held was taken was reversible error. *United States* v. *Esnault-Pelterie*, 299 U. S. 201; 205–206; *United States* v. *Seminole Nation*, 299 U. S. 417, 422; *United States* v. *Wells*, 283 U. S. 102, 120–121.

Although reference was made to the question in the opinion, no finding was made as to whether the easement had been taken temporarily or permanently. It is also well settled that the absence

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[17] Act of February 13, 1925, c. 229, sec. 3, 43 Stat. 939, as amended by the Act of May 22, 1939, c. 140, 53 Stat. 752, 28 U. S. C. sec. 288.

of findings cannot be supplied by statements in the opinion. *United States* v. *Esnault-Pelterie*, 279 U. S. 201, 206; *Crocker* v. *United States*, 240 U. S. 74, 78. The statements of the majority opinion below cannot, therefore, cure the court's error in failing to find whether the easement was permanent or temporary.

B. *The evidence and findings of fact cannot support a conclusion that a permanent easement was taken.*—The lease of the United States of this airport was renewable from year to year until June 30, 1967, or six months after the end of the present national emergency, whichever should first occur (Findings 5, 11; R. 6, 10, 220). The court found that there was no evidence of an intention of the Government to use the airport after termination of the lease (Finding 11; R. 10). The opinion stated (R. 17) "Upon the expiration of its current lease on the airport defendant no doubt intended to make some sort of arrangement whereby it could use the airport for its military planes whenever it had occasion to do so." Plainly, liability of the United States cannot be founded on such speculation which is admittedly not based on evidence (see e. g., *Horstmann Co.* v. *United States*, 257 U. S. 138). As dissenting Judge Madden stated (R. 19), the Government "has been obliged to pay for a permanent right which it does not want and has no expectation of using."

Moreover, the evidence in fact contradicts the court's assumption. If permanent arrangements had been contemplated they would have been made at the time the lease was executed. With the end of the war the widespread activity of fighter and bomber planes ceased. Respondents' claim was based principally upon the flights of heavy bombers, their position being that smaller civilian planes did not greatly disturb them (R. 34–37, 52–53). Under the circumstances, the most reasonable assumption, if one is to be made, is that such activity by heavy bombers will not continue in the future. During the war, similar activities were carried on at a great many airports throughout the country. The War Department and Navy Department administered some 1262 airports which were either owned in fee or were operated under leases. The use of many of these fields was merely temporary during the hostilities and has now ceased. In connection with the acquisition of the great amount of property that was needed for prosecution of the war, it was the policy to acquire simply the temporary use rather than fee title when there was doubt whether the property would be permanently needed for military purposes. See, *e. g.*, *United States* v. *General Motors Corp.*, 323 U. S. 373; *United States* v. *Petty Motor Co.*, October Term, 1945, Nos. 77–83, decided February 25, 1946; S. Rep. No. 10, part 16, 78th Cong., 2d sess., p. 121, in connection with the

Military Appropriations Act, 1945, (Act of June 28, 1944, 58 Stat. 573). In accord with this policy, the Government acquired temporary rights to use the many airfields throughout the country. There is nothing in this record to demonstrate that the Government departed from this policy in the case of this airfield. We submit, therefore, that, absent a showing of intent to continue the activities permanently, the Government is liable only for a temporary taking. Cf. *Johnson* v. *United States*, 2 C. Cls. 391.

IV

The award of $2,000 is not supported by findings of fact or evidence

Finding 14 of the court below states (R. 11):

> The value of plaintiffs' property that was destroyed and the value of the easement taken, together with the damage to the remainder of plaintiffs' property as a result of the taking of the easement, is $2,000.00. The date of the taking of the easement was June 1, 1942.

The opinion states that this was the conclusion "from all the testimony" and that a judgment "in the nature of a jury verdict will be rendered for this amount" (R. 18). This characterization makes no difference since a jury's verdict must be within the range of the testimony as to value. *United States* v. *685.2 Acres of Land in Lake County*, 146 F. 2d 998 (C. C. A. 7); *Branson* v. *Reichelderfer*, 65 F. 2d 280 (App. D. C.)

The process used by the court to arrive at its figure does not appear. If, as the Government contends (*supra*, pp. 47–49), its liability is limited to a temporary taking, the judgment is plainly erroneous since there was no evidence as to rental value.[*]

Even if the Government was obligated to pay for a permanent easement, the judgment below cannot stand. The plaintiffs' only evidence was that the fee value of their property was from $4,700 to $5,700 (R. 25–26, 32) and that the fair value of the loss of the chicken business was $1,000 (R. 38). In rebuttal, the Government presented expert opinions that the value of the property was between $2,500 and $2,885 (R. 81, 96–98, 113–114). Respondents contend (Br. in Opp.

[*] When the Government takes the temporary use of property, compensation is measured by the annual market rental value. Similarly, assuming that the Government's contention (*supra*, pp. 30–34) that damage from various elements of the noise, lights and accidents cannot be considered is rejected, compensation here should be assessed by determining the extent to which the taking of the easement has depreciated annual market rental value of the property. *United States* v. *.68 Acres of Land, Etc.*, 147 F. 2d 351, 352 (C. C. A. 2); *United States* v. *412.15 Acres of Land, Etc.*, 60 F. Supp. 576, 577 (N. D. Cal.); *United States* v. *12918.28 Acres of Land, Etc.*, 57 F. Supp. 893 (W. D. Pa.); *United States* v. *15.86 Acres of Land, Etc.*, 57 F. Supp. 745 (D. Neb.); *United States* v. *Entire Floor in Butterick Bldg.*, 54 F. Supp. 258, 259, 260 (S. D. N. Y.); *United States* v. *Certain Parcels of Land, Etc.*, 55 F. Supp. 257, 264 (D. Md.); *Johnson* v. *United States*, 2 C. Cls. 391, 415–416, 419; *Johnson* v. *United States*, 4 C. Cls. 248, 251; *Pope* v. *United States*, 26 C. Cls. 11, 13.

2, 3) that the Court of Claims adopted the process of the Commissioner in concluding that fee value before the taking was $4,000 and that after the taking it was $2,000. The dissenting opinion indicates (R. 18) that the majority adopted that process. But there was no evidence of value after the taking, let alone evidence that after the taking the property was worth only $2,000. Government witnesses testified that the airport hazard did not substantially affect market value (R. 89, 101). And E. D. Warren, one of plaintiffs' two experts, admitted on cross-examination that "the lack of available land for sale close to the airport has increased its value" (R. 30). Moreover, Warren's estimate of $2,500 value for the house was based on cost of replacement at the time of trial and he admitted that this would be $500 to $700 more than at the date of taking two years earlier (R. 29–30). Thus, the evidence contradicts the statement of the court below (Finding 12, R. 10) that respondents' property "has depreciated in value."

Moreover, the United States is certainly only liable for the decrease in value resulting from the activity of Government aircraft flying over respondents' property. It does not appear whether the judgment below was so limited or whether it also included damage from planes of others or from Government planes flying over other property. The fact is that Government

traffic represented only about ⅓ of the total traffic at the airfield (Finding 8, R. 8). Of this ⅓ only about 10% represented heavy bombers to which respondents attributed the damage (Finding 8, R. 7). Thus, the activity of which complaint was made represented only about 3% of the total traffic at the airfield. Moreover, because of the prevailing winds the runway near respondents' property was only used 11% of the time. These facts show that the heavy bombers passed over plaintiffs' property in taking off or landing on an average about once every day and a half.[13] There is nothing to show that the market value of plaintiffs' property was thereby decreased 50% (cf. Br. in Opp. p. 8).

Finding 14 refers to the value of property "that was destroyed" (R. 11). The only reference to such property is the concluding sentence of Finding 13 that "This situation has destroyed the use of the property as a commercial chicken farm" (R. 10). But it is clear that consequential damages from the destruction or loss of profits of the landowner's business may not be considered

[13] Taking the maximum figure of 1,750 take-offs and landings of military aircraft per month (R. 8), the heavy bombers would use the field 175 times per month. They would pass over plaintiffs' property only about 20 times a month. Since only 1% of the military flying took place at night (R. 135–136), heavy bombers would pass over respondents' land at night only once every five months. Therefore, these planes could not seriously disturb respondents at night (cf. Finding 12; R. 10; cf. also R. 12).

in determining the compensation payable upon a taking by eminent domain. *Mitchell* v. *United States*, 267 U. S. 341, 345; *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266, 281; *United States* v. *Petty Motor Co.*, October Term, 1945, Nos. 77–83, decided February 25, 1946; *Joslin Co.* v. *Providence*, 262 U. S. 668; *State Airport Commission* v. *May*, 51 R. I. 110, 112. While purporting to recognize this rule, the court below stated that respondents "are entitled to recover the special value of the land due to its adaptability for use for this business" (R. 18). But, except for the fact that respondents were operating a chicken business, there was no evidence that this particular land had a special value for chicken-raising purposes or that it could command an enhanced price on the market because of this special use. On the contrary, respondents' expert, Warren, rather than relying on such a special use, justified his valuation by reference to sales of neighboring lands (R. 25, 30) and stated he knew nothing about the extent of the chicken business (R. 27–28). Respondents' other expert, Miles, made no reference to any special value of the land for chicken-raising purposes (R. 30–33). Thus, there was no factual basis for a conclusion that the market value of this property was enhanced because of its peculiar adaptability to the chicken business. The award of $2,000 cannot, therefore, be supported by reference to

the loss of the chicken business. And, in any event, the Causbys' claim for loss of the chicken business was only $1,000 (R. 3, 38).

There was, therefore, no evidence upon which to base a conclusion that the value of the property taken was $2,000.00.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

J. HOWARD MCGRATH,
Solicitor General.
J. EDWARD WILLIAMS,
Acting Head, Lands Division.
ROGER P. MARQUIS,
WALTER J. CUMMINGS, JR.,
ALVIN O. WEST,
Attorneys.

APRIL 1946.

APPENDIX

The following sections of the General Statutes of North Carolina of 1943 relate to rights in air space and were in effect at all times material to this proceeding:

§ 63–11. Sovereignty in space.—Sovereignty in space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States.

§ 63–12. Ownership of space.—The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in § 63–13.

§ 63–13. Lawfulness of flight.—Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable as provided in § 63–14.

The Model Airport Zoning Act, General Statutes of North Carolina of 1943, §§ 63–29—63–37,

Laws 1941, c. 250, authorized the political subdivisions of the state to adopt, administer, and enforce airport zoning regulations and established the procedure to be followed. The public interest requiring the Act is stated in § 63–30 as follows:

> § 63–30. Airport hazards not in public interest.—It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

NUMBER 630.

THE UNITED STATES OF AMERICA

v.

THOMAS LEE CAUSBY AND WIFE, TINIE CAUSBY.

BRIEF OF PLAINTIFFS—RESPONDENTS.

WM. E. COMER,
Attorney for the Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF OF PLAINTIFFS—RESPONDENTS

The plaintiffs filed their claim in the Court of Claims alleging that the United States had made such use of their property as to amount to a taking, and also that they had suffered special damages in the amount of One Thousand Dollars ($1,000.00) on account of the loss of their chicken business brought about by the defendant's use of the property. The plaintiffs alleged that the land and improvements were worth Six Thousand Thirty-five Dollars ($6,035.00), and asked for Seven Thousand Thirty-five Dollars ($7,035.00) including the special damages.

The case was referred to Honorable Herbert E. Gyles, Commissioner, and hearings were held in Greensboro, North Carolina, the first being held April 24, 1944. Two subse-

quent hearings were held before the evidence was completed.

On October 6, 1944, Commissioner Gyles filed a report consisting of sixteen findings of fact. Commissioner Gyles found the value of plaintiffs' property to be Four Thousand Dollars ($4,000.00) before the lease of the United States in May, 1942, and that the reasonable value since the United States took over the airfield to be Two Thousand Dollars ($2,000.00). He also found that the plaintiffs' loss on account of the chicken business was approximately Five Hundred Dollars ($500.00).

The United States filed exceptions to Commissioner Gyles' findings of fact and the case was subsequently heard and argued in the Court of Claims, and decided by the said Court June 4, 1945. The Court made findings of fact, and conclusions of law and ordered that the plaintiffs recover of the defendant the sum of Two Thousand Dollars ($2,000.00). The opinion was written by Judge Whitaker.

The United States petitions for a Writ of Certiorari.

STATEMENT OF FACTS.

While it is not deemed necessary that many of the facts be related in detail, attention is called to certain pertinent findings in the report of Commissioner Gyles and also in the special findings of fact of the Court of Claims. As found by Commissioner Gyles, a lease was entered into May 11, 1942 between the Greensboro-High Point Airport Authority and the United States of America with provision for renewal until June 30, 1967. The lease has been renewed and is in operation.

Under finding three of Commissioner Gyles' report we find the following: "During the year 1939 extensions were made to one or both runways, but no hard surface extensions have been made since that date. There was no control tower for directing the operation of planes prior to July, 1943. Traffic was not heavy until the present war."

Under finding five we find the following: "Plaintiffs' property located on Federal Highway #421 is approxi-

mately 2,165 feet from the end of the paved portion of the northwest-southeast runway, and approximately 1,653 feet from the graded area." Commissioner Gyles found that there had been four accidents at the airport since July, 1943. In one accident a Navy plane ran into a house and five persons were killed. Commissioner Gyles found (finding thirteen) that, prior to May, 1942, the greater proportion of the planes were civilian planes being light aircraft. The mail planes were much lighter than the Army and Navy planes. The light planes passed the plaintiffs' house relatively much higher. In finding thirteen we observe the following: "They (the planes) came close enough to the tops of the trees (in plaintiffs' yard) to cause the old leaves of the trees to fly off. The noise so close to the buildings is startling and terrifying, and at night the glare from the planes brightly lights up the immediate area. The planes became more numerous after the Army began its operations and this situation has been continuous since that date and probably will so continue for the duration of defendant's lease with the airport authority."

In finding fourteen, Commissioner Gyles finds that the peace and comfort of the plaintiffs' home has been seriously interfered with and that their property has been depreciated in value. The value of the property before the defendant's interference was found to be Four Thousand Dollars ($4,000.00), and the value since the defendant's interference was found to be Two Thousand Dollars ($2,000.00).

In the special findings of fact, number twelve, appears the following: "The result of this situation together with knowledge of the accidents that have occurred is that the plaintiffs' and their family have become nervous and frightened. At night they are frequently deprived of sleep. The peace and comfort of their home are seriously interfered with. Their property, for the same reason, has depreciated in value." In special finding of fact number thirteen, the Court found that the defendant's use of the property has destroyed the property as a commercial chicken farm, pointing out that as many as six to ten chickens a day had been

killed by flying against the walls from fright caused by the planes.

Finding fourteen acres the value of the plaintiffs' property that was destroyed and the value of the easement taken at Two Thousand Dollars ($2,000.00).

Prior to May, 1942, when the defendant began operations, the only heavy planes using the airport were mail planes and they did not fly very close to the plaintiffs' property. According to the evidence, after the defendant began operations, all types of heavy four motored planes began to make use of the property.

There was ample evidence to support the finding as to the value of the property. In fact the plaintiffs' evidence showed that the property was worth Five Thousand Seven Hundred Dollars ($5,700.00).

ARGUMENT.

The petitioner raises four questions in his petition for review.

1. Whether the flight of aircraft over the plaintiffs' land at a minimum elevation of 83 feet constituted a taking for which recovery may be had under the Tucker Act.

2. If so, whether the effect of the noise and lights of aircraft crossing above the land and the landowner's knowledge that airplane accidents have taken place at or in the vicinity of the airport may be considered in determining the compensation to be paid for such taking.

3. Whether the Court of Claims erred in failing to specify what property interest was taken and whether such interest was permanent or temporary.

4. Whether the ultimate conclusion determining compensation to be $2,000 is supported by evidentiary findings and by substantial evidence.

With respect to the first question raised the undisputed evidence is that some of the planes went close enough to the tops of the trees to either clip or blow the leaves from the

trees, the evidence being that the trees were from 50 to 60 feet high. It is not known just how the petitioner arrived at 83 feet unless this were the theoretical height at which the glide planes were supposed to pass over the property, so, at the outset, it is contended that the planes went much nearer the land and house of the plaintiffs' than 83 feet.

There is nothing strange about the holding that recovery may be had for conditions brought about by the defendant's use of the plaintiffs' property. The owners of property are entitled to the quiet enjoyment of the same. To say that the plaintiffs were startled and terrified by the noise and, at night, from the glare of planes passing immediately above their house would be putting it mildly. To use the language of the Commissioner and of the Court in the findings of fact, the peace and comfort of the plaintiffs' home were seriously interfered with. It is only 1,653 feet from the graded area of the runway to the home and property of the plaintiffs, record page 104. This is a little more than a quarter of a mile which at a speed of 420 miles an hour would be traversed in something like seven seconds. It is a matter of common knowledge that virtually all of the accidents happen either in landing or taking off. The knowledge of four accidents within a short period in one of which five persons were killed, record page 230-11, and another which happened between the end of the runway and plaintiffs' property, record page 39, only added to the horror and anguish created by the situation.

One of the defendant's witnesses, an expert from State College at Raleigh, North Carolina, testified that the conditions were very bad from a standpoint of the chicken farm, record page 200-201.

The use made of the property by the defendant certainly amounts to a taking. As pointed out in the opinion of the Court, "a landowner not only owns the surface of his land, but also owns all that lies beneath the surface even to the bowels of the earth and all the air space above it even unto the periphery of the sky." Any erection over the land of another or any passage through the air space above it is a

trespass. In *Butler v. Frontier Telephone Company*, 186 N. Y., 486, 79 NE 716, it was held that where a telephone or telegraph company stretched its wires over the land of another without permission, such company was guilty of a trespass. In *Whittaker v. Stangwick et al*, 111 N. W. 2d, the Court held that the shooting of guns over another's land is a trespass even though the bullets do not land upon it.

Even though the common law doctrine may have been somewhat modified, a land owner today owns the air space above his land, or the minerals beneath it to the extent necessary for his full and complete enjoyment of his land. Numerous cases are cited in the opinion filed in this cause.

Under the undisputed facts in this case the defendant has committed and is still committing trespasses upon the plaintiffs' property. The trespasses have seriously interfered with the plaintiffs' enjoyment of their property and they have had to abandon it as a chicken farm. Certainly the trespasses are frequent enough to constitute a taking, inasmuch as they destroy the owners use and enjoyment of the property. *Harlow v. Kincaid*, 285 U. S. 95. *Portsmouth Harbor Land & Hotel Company v. United States*, 260 U. S. 327 is clearly in point. In fact the case at bar is stronger than the Portsmouth Harbor Land & Hotel Company case because in that case the defendant had fired its guns across the land only twice. In the instant case we have frequent invasions of the air space and evidence of a clear intention to continue the trespasses and invasions every time the wind is right for use of that particular runway.

Passing on to the second question raised by the petitioner, it is contended that the noise and lights of aircraft and the knowledge of airplane accidents are circumstances to be considered in determining whether or not the use made of the property amounts to a taking. The only way the Court could arrive at the amount of compensation was to consider to what extent the taking reached. In other words it is believed that the Court realized that the part that was left had some value, and that is why the judgment was less than the total value of the land. The taking of the air space

above plaintiffs' property resulted in damage to the remainder of the property, so the plaintiffs should recover both for the value of the part taken and for the damage done to the remainder. This was held in the case *United States* v. *Grizzard*, 219 U. S. 180.

Under question three the petitioner contends that the Court of Claims erred in failing to specify what property interest was taken and whether or not it was permanent. It is contended that the Court of Claims did specify what was taken, to wit, an easement or a continuation of trespasses at all hours of the day and night, at present so great that they literally drove the plaintiffs out of the chicken business from which they had been gaining a livelihood. In other words the defendant literally took the air space above the plaintiffs' land and so used that part as to damage the remainder.

The taking certainly has the ear marks of permanency with the growing interest in aviation and especially the plans for continued air power and universal military training. But whether the defendant intended to appropriate and use the air space permanently or not, it is a taking nevertheless. Numerous authorities are cited in the opinion of the Court of Claims on this point. In other words even if the taking were temporary, which is denied, it would still be a taking, entitling the owners to recover just compensation. A perusal of the terms of the defendant's lease is convincing proof that the defendant intended to use the airport for military planes whenever it chose to do so. It is contended that the easement appropriated by the defendant is of a permanent nature.

Finally let us consider the fourth question raised by the petitioner: Whether the ultimate conclusions determining compensation to be Two Thousand Dollars ($2,000.00) is supported by evidentiary findings and by substantial evidence. With respect to the value of the property, as pointed out above, the Court could have justifiably found it to be Five Thousand Seven Hundred Dollars ($5,700.00) instead of Four Thousand Dollars ($4,000.00). As contended in the

Court of Claims, the defendant's witnesses as to the value of the land were interested witnesses, two of whom were employed at the time by agencies of the Government. The defendant's other witness on this point admitted that he had never been inside the house and did not know that there was a deep well and pressure water system on the premises with water piped to the various chicken houses. The plaintiffs' witnesses, who were disinterested, fixed the value of the property and improvements at Five Thousand Seven Hundred Dollars ($5,700.00).

So it is contended that the valuation of Four Thousand Dollars ($4,000.00) placed on the property by the Court was really low and more than justified by ample evidence. If we consider the value of the part of the land taken, to-wit, the easement, and the damage done to the remainder, its adaptability for the chicken business, it is easy to come to the conclusion that the use of the property has been diminished at least 50 per cent; therefore, there is plenty of substantial evidence to justify the fixing of the compensation at Two Thousand Dollars ($2,000.00).

In conclusion it is contended that there is no such diversity of holdings among the Courts or the various Circuits as to warrant a review. The defendant has had its day in Court. The amount involved is small and the recovery is just and fair, and there are no unusual circumstances surrounding the case which would justify a review. It is seriously contended that the petition for the writ of certiorari should be denied.

Respectfully submitted,

WM. E. COMER,
Attorney for the Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 630. OCTOBER TERM, 1945.

The United States, Petitioner, *vs.* Thomas Lee Causby and Wife, Tinie Causby.	On Writ of Certiorari to the Court of Claims.

[May 27, 1946.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

This is a case of first impression. The problem presented is whether respondents' property was taken within the meaning of the Fifth Amendment by frequent and regular flights of army and navy aircraft over respondents' land at low altitudes. The Court of Claims held that there was a taking and entered judgment for respondent, one judge dissenting. 60 F. Supp. 751. The case is here on a petition for a writ of certiorari which we granted because of the importance of the question presented.

Respondents own 2.8 acres near an airport outside of Greensboro, North Carolina. It has on it a dwelling house, and also various outbuildings which were mainly used for raising chickens. The end of the airport's northwest-southeast runway is 2,220 feet from respondents' barn and 2,275 feet from their house. The path of glide to this runway passes directly over the property—which is 100 feet wide and 1,200 feet long. The 30 to 1 safe glide angle[1] approved by the Civil Aeronautics Authority[2] passes over this property at 83 feet, which is 67 feet above the house, 63 feet above the barn and 18 feet above the highest tree.[3] The use by the United States of this airport is pursuant to a lease executed in May, 1942, for a term commencing June 1, 1942 and ending June 30, 1942, with a provision for renewals until June 30, 1967, or six months after the end of the national emergency, whichever is the earlier.

[1] A 30 to 1 glide angle means one foot of elevation or descent for every 30 feet of horizontal distance.

[2] Military planes are subject to the rules of the Civil Aeronautics Board where, as in the present case, there are no Army or Navy regulations to the contrary. Cameron *v.* Civil Aeronautics Board, 140 F. 2d 482.

[3] The house is approximately 16 feet high, the barn 20 feet, and the tallest tree 67 feet.

Various aircraft of the United States use this airport—bombers, transports and fighters. The direction of the prevailing wind determines when a particular runway is used. The northwest-southeast runway in question is used about four per cent of the time in taking off and about seven per cent of the time in landing. Since the United States began operations in May, 1942, its four-motored heavy bombers, other planes of the heavier type and its fighter planes have frequently passed over respondents' land and buildings in considerable numbers and rather close together. They come close enough at times to appear barely to clear the tops of the trees and at times so close to the tops of the trees as to blow the old leaves off. The noise is startling. And at night the glare from the planes brightly lights up the place. As a result of the noise, respondents had to give up their chicken business. As many as six to ten of their chickens were killed in one day by flying into the walls from fright. The total chickens lost in that manner was about 150. Production also fell off. The result is the destruction of the use of the property as a commercial chicken farm. Respondents are frequently deprived of their sleep and the family has become nervous and frightened. Although there have been no airplane accidents on respondents' property, there have been several accidents near the airport and close to respondents' place. These are the essential facts found by the Court of Claims. On the basis of these facts, it found that respondents' property had depreciated in value. It held that the United States had taken an easement over the property on June 1, 1942, and that the value of the property destroyed and the easement taken was $2,000.

I. The United States relies on the Air Commerce Act of 1926, 44 Stat. 568, 49 U. S. C. § 171, as amended by the Civil Aeronautics Act of 1938, 52 Stat. 973, 49 U. S. C. § 401. Under these statutes the United States has "complete and exclusive national sovereignty in the air space" over this country. 49 U. S. C. § 176 (a). They grant any citizen of the United States "a public right of freedom of transit in air commerce[1] through the navigable air space of the United States." 49 U. S. C. § 403. And "navigable air space" is defined as "airspace above the minimum safe

[1] "Air commerce" is defined as including "any operation or use of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce." 49 U. S. C. § 401 (3).

"altitudes of flight prescribed by the Civil Aeronautics Authority." 49 U. S. C. § 180. And it is provided that "such navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation." *Id.* It is, therefore, argued that since these flights were within the minimum safe altitudes of flight which had been prescribed, they were an exercise of the declared right of travel through the airspace. The United States concludes that when flights are made within the navigable airspace without any physical invasion of the property of the landowners, there has been no taking of property. It says that at most there was merely incidental damage occurring as a consequence of authorized air navigation. It also argues that the landowner does not own superadjacent airspace which he has not subjected to possession by the erection of structures or other occupancy. Moreover, it is argued that even if the United States took airspace owned by respondents, no compensable damage was shown. Any damages are said to be merely consequential for which no compensation may be obtained under the Fifth Amendment.

It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe. *Cujus est solum ejus est usque ad coelum.*[2] But that doctrine has no place in the modern world. The air is a public highway, as Congress has declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits. Common sense revolts at the idea. To recognize such private claims to the airspace would clog these highways, seriously interfere with their control and development in the public interest, and transfer into private ownership that to which only the public has a just claim.

But that general principle does not control the present case. For the United States conceded on oral argument that if the flights over respondents' property rendered it uninhabitable, there would be a taking compensable under the Fifth Amendment. It is the owner's loss, not the taker's gain, which is the measure of the value of the property taken. *United States* v. *Miller*, 317 U. S. 369. Market value fairly determined is the normal measure of the recovery. *Id.* And that value may reflect the use to which the land could readily be converted, as well as the existing use. *United*

[2] Coke, Institutes (19th ed. 1832) 4b, 1, 127a; 2 Blackstone, Commentaries (Lewis ed. 1902) p. 18; 3 Kent, Commentaries (Gould ed. 1896) p. 621.

States v. *Powelson*, 319 U. S. 266, 275, and cases cited. If, by reason of the frequency and altitude of the flights, respondents could not use this land for any purpose, their loss would be complete.[6] It would be as complete as if the United States had entered upon the surface of the land and taken exclusive possession of it.

We agree that in those circumstances there would be a taking. Though it would be only an easement of flight which was taken, that easement, if permanent and not merely temporary, normally would be the equivalent of a fee interest. It would be a definite exercise of complete dominion and control over the surface of the land. The fact that the planes never touched the surface would be as irrelevant as the absence in this day of the feudal livery of seisin on the transfer of real estate. The owner's right to possess and exploit the land—that is to say, his beneficial ownership of it—would be destroyed. It would not be a case of incidental damages arising from a legalized nuisance such as was involved in *Richards* v. *Washington Terminal Co.*, 233 U. S. 546. In that case property owners whose lands adjoined a railroad line were denied recovery for damages resulting from the noise, vibrations, smoke and the like, incidental to the operations of the trains. In the supposed case the line of flight is over the land. And the land is appropriated as directly and completely as if it were used for the runways themselves.

There is no material difference between the supposed case and the present one, except that here enjoyment and use of the land are not completely destroyed. But that does not seem to us to be controlling. The path of glide for airplanes might reduce a valuable factory site to grazing land, an orchard to a vegetable patch, a residential section to a wheat field. Some value would remain. But the use of the airspace immediately above the land would limit the utility of the land and cause a diminution in its value.

[6] The destruction of all uses of the property by flooding has been held to constitute a taking. Pumpelly v. Green Bay Co., 13 Wall. 166; United States v. Lynah, 188 U. S. 445; United States v. Welch, 217 U. S. 333, 338. "It was stated in United States v. General Motors Corp., 323 U. S. 373, 378, "The courts have held that the deprivation of the former owner, rather than the accretion of a right or interest to the sovereign, constitutes a taking. Governmental action short of acquisition of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking." The present case falls short of the *General Motors* case. This is not a case

That was the philosophy of *Portsmouth Co.* v. *United States*, 260 U. S. 327. In that case the petition alleged that the United States erected a fort on nearby land, established a battery and a fire control station there, and fired guns over petitioner's land. The Court, speaking through Mr. Justice Holmes, reversed the Court of Claims which dismissed the petition on a demurrer, holding that "the specific facts set forth would warrant a finding that a servitude had been imposed." 260 U. S. p. 330. And see *Delta Air Corp.* v. *Kersey*, 193 Ga. 862. Cf. *United States* v. *.37.35 Acres of Land*, 55 F. Supp. 461.

The fact that the path of glide taken by the planes was that approved by the Civil Aeronautics Authority does not change the result. The navigable airspace which Congress has placed in the public domain is "airspace above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority." 49 U. S. C. § 180. If that agency prescribed 83 feet as the minimum safe altitude, then we would have presented the question of the validity of the regulation. But nothing of the sort has been done. The path of glide governs the method of operating of landing or taking off. The altitude required for that operation is not the minimum safe altitude of flight which is the downward reach of the navigable airspace. The minimum prescribed by the authority is 500 feet during the day and 1000 feet at night for air carriers. Civil Air Regulations, Pt. 61, §§ 61.7400, 61.7401, Code Fed. Reg. Cum. Supp., Tit. 14, ch. I and from 500 feet to 1000 feet for other aircraft depending on the type of plane and the character of the terrain. *Id.*, Pt. 60, §§ 60.3501-60.3505, Fed. Reg. Cum. Supp., *supra*. Hence, the flights in question were not within the navigable airspace which Congress placed within the public domain. If any airspace needed for landing or taking off were included, flights which were so close to the land as to render it uninhabitable would be immune. But the United States concedes, as we have said, that in that event there would be a taking. Thus, it is apparent that the path of

the United States has merely destroyed property. It is using a part of it for the flight of its planes.

Cf. Warren Township School Dist. v. Detroit, 326 Mich. 466; Smith v. New England Aircraft Co., 270 Mass. 511; Burnham v. Beverly Airways, Inc., 311 Mass. 628.

On remand the allegations in the petition were found not to be supported by the facts. 64 Ct. Cls. 572.

glide is not the minimum safe altitude of flight within the meaning of the statute. The Civil Aeronautics Authority has, of course, the power to prescribe air traffic rules. But Congress has defined navigable airspace only in terms of one of them—the minimum safe altitudes of flight.

We have said that the airspace is a public highway. Yet it is obvious that if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise buildings could not be erected, trees could not be planted, and even fences could not be run. The principle is recognized when the law gives a remedy in case overhanging structures are erected on adjoining lots. The landowner owns at least as much of the space above the ground as he can occupy or use in connection with the land. See *Hinman v. Pacific Air Transport*, 84 F. 2d 755. The fact that he does not occupy it in a physical sense—by the erection of buildings and the like—is not material. As we have said, the flight of airplanes which skim the surface but do not touch it, is as much an appropriation of the use of the land as a more conventional entry upon it. We would not doubt that if the United States erected an elevated railway over respondents' land at the precise altitude where its planes now fly, there would be a partial taking, even though none of the supports of the structure rested on the land. The reason is that there would be an intrusion so immediate and direct as to subtract from the owner's full enjoyment of the property and to limit his exploitation of it. While the owner does not in any physical manner occupy that stratum of airspace or make use of it in the conventional sense, he does use it in some

[9] Baten's Case, 9 Coke R. 53b; Meyer v. Metzler, 51 Calif. 142; Butler v. Evans, 89 Mass. 431; Harrington v. McCarthy, 169 Mass. 492. See *The Vertical Extent of Ownership in Land*, 76 U. Pa. L. Rev. 631, 638-[illegible].

[10] It was held in Butler v. Frontier Telephone Co., 186 N. Y. 486, that ejectment would lie where a telephone wire was strung across the plaintiff's property, even though it did not touch the soil. The court stated, p. 492: "... an owner is entitled to the absolute and undisturbed possession of every part of his premises, including the space above, as much as that beneath. If the wire had been a huge cable, several inches thick and but a foot above the ground, there would have been a difference in degree, but not in principle. Expand the wire into a beam supported by posts standing upon abutting lots without touching the surface of plaintiff's land, and the difference would still be one of degree only. Enlarge the beam into a building and yet space only would be occupied. Erect a house upon the boundary and the air above the surface of the land would alone be disturbed."

not determine at this time what those precise limits are. [illegible] over private land are not a taking, unless they are so low and frequent as to be a direct and immediate interference with the enjoyment and use of the land. We need not speculate on that phase of the present case. For the findings of the Court of Claims plainly establish that there was a diminution in value of the property and that the frequent, low level flights were the cause and immediate cause. We agree with the Court of Claims that a servitude has been imposed upon the land.

II. By § 145 of the Judicial Code, 28 U. S. C. § 250, the Court of Claims has jurisdiction to hear and determine all claims (except for pensions) founded upon the Constitution of the United States or [illegible] upon any contract, express or implied, with the Government of the United States." We need not decide whether repeated trespasses might give rise to an implied contract. Cf. *Portsmouth* v. *United States*, 260 U. S. 327. If there is a taking, the claim is "founded upon the Constitution" and within the jurisdiction of the Court of Claims to hear and determine. *See Hollister* v. *Benedict Mfg. Co.*, 113 U. S. 59, 67; *Hurley* v. *Kincaid*, 285 U. S. 95, 104; *Yearsley* v. *W. A. Ross Construction Co.*, 309 U. S. 18, 21. Thus, the jurisdiction of the Court of Claims in this case is clear.

III. The Court of Claims held, as we have noted, that an easement was taken. But the findings of fact contain no adequate description as to its nature. It is not described in terms of frequency of flight, permissible altitude, or type of airplane. Nor is there a finding as to whether the easement taken was temporary or permanent. Yet an accurate description of the property taken is essential, since that interest vests in the United States. *United States* v. *Cress*, *supra*, 328-329 and cases cited. It is true that the Court of Claims stated in its opinion that the easement taken was permanent. But the deficiency in findings cannot be remedied by statements in the opinion. *United States* v. *Esnault-Pelterie*, 299 U. S. 201, 205-206; *United States* v. *Seminole Nation*, 299 U. S. 417, 422. Findings of fact on every "material issue" are a statutory requirement. 53 Stat. 752, 28 U. S. C. § 288. The importance of findings of fact based on evidence is emphasized here by the Court of Claims' treatment of the nature of the easement. It stated in its opinion that the easement was permanent because the United States "no doubt intended to make such

of arrangement whereby it sought use the airport for its military planes whenever it had occasion to do so." That sounds more like conjecture rather than a conclusion from evidence, and if so it would not be a proper foundation for liability of the United States. We should not stop to examine the evidence to determine whether it would support such a finding, if made. For that is not our function. *United States v. Carolene Products Co.*, *supra*, p. 200. Since on this record it is not clear whether the easement taken is a permanent or a temporary one, it would be premature for us to consider [illegible] of the award made by the Court of Claims was proper.

The judgment is reversed and the cause is remanded to the Court of Claims so that it may make the necessary findings in conformity with this opinion.

Reversed.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 630.—October Term, 1945.

The United States, Petitioner, vs. Thomas Lee Causby and wife, Tinie Causby.	On Writ of Certiorari to the Court of Claims.

[May 27, 1946.]

Mr. Justice Black dissenting.

The Fifth Amendment provides that "private property" shall not "be taken for public use without just compensation." The Court holds today that the Government has "taken" respondents' property by repeatedly flying Army bombers directly above respondents' land at a height of eighty-three feet where the light and noise from these planes caused respondents to lose sleep and their chickens to be killed. Since the effect of the Court's decision is to limit, by the imposition of relatively absolute Constitutional barriers, possible future adjustments through legislation and regulation which might become necessary with the growth of air transportation, and since in my view the Constitution does not contain such barriers, I dissent.

The following is a brief statement of the background and of the events that the Court's opinion terms a "taking" within the meaning of the Fifth Amendment: Since 1928 there has been an airfield some eight miles from Greensboro, North Carolina. In April, 1942, this airport was taken over by the Greensboro-High Point Municipal Airport Authority and it has since then operated as a municipal airport. In 1942 the Government, by contract, leased the right to use the field "concurrently, jointly, and in common" with other users. Years before, in 1934, respondents had bought their property, located more than one-third of a mile from the airport. Private planes from the airport flew over their land and farm buildings from 1934 to 1942 and are still doing so. But though these planes disturbed respondents to some extent, Army bombers, which started to fly over the land in 1942 at a height of eighty-three feet, disturbed them more because they were larger, came over more frequently, made a louder noise, and

at night a greater glare was caused by their lights. This noise and glare disturbed respondents' sleep, frightened them, and made them nervous. The noise and light also frightened respondents' chickens so much that many of them flew against buildings and were killed.

The Court's opinion seems to indicate that the mere flying of planes through the column of air directly above respondents' land does not constitute a "taking". Consequently, it appears that noise and glare, to the extent and under the circumstances stated here, which make the government a seizer of private property. But the allegation of noise and glare resulting in damages constitutes at best an action in tort where there might be recovery if the noise and light constituted a nuisance, a violation of a statute,[1] or were the result of negligence.[2] But the Government has not consented to be sued in the Court of Claims except on actions based on express or implied contract. And there is no implied contract here, unless by reason of the noise and glare caused by the bombers the Government can be said to have "taken" respondents' property in a Constitutional sense. The concept of taking property as used in the Constitution has heretofore never been given so sweeping a meaning. The Court's opinion presents no case where a man who makes noise or shines light onto his neighbor's property has been ejected from that property for wrongfully taking possession of it. Nor would anyone take seriously a claim that noisy automobiles passing on a highway are taking wrongful possession of the homes fronting thereon, or that a city elevated train which greatly interferes with the sleep of those who live next to it wrongfully takes their property. Even the one case in this Court which in considering the sufficiency of a complaint gave the most elastic meaning to the phrase, "private property be taken" as used in the Fifth Amend-

[1] Neiswonger v. Goodyear Tire and Rubber Co., 35 Fed. 761.

[2] As to the damage to chickens, Judge Madden, dissenting from the judgment against the Government said, "When railroads were new, and fields in sight and hearing of the trains, were alarmed, thinking that great moving objects would turn aside and harm them. Horses ran from the sight and sound of a train or a threshing machine engine. The chickens have to get over being alarmed at the incredible racket a tractor starting up suddenly in the shed adjoining the chicken house. Sights and noises are a part of our world, and airplanes are now and will be to a greater degree, likewise a part of it. These disturbances should be treated as torts, in the case of the airplane, any more than they are treated in the case of the railroad or public highway."

ment, did not go so far. *Portsmouth Co.* v. *United States*, 260 U. S. 327. I am not willing, nor do I think the Constitution and the decisions authorize me, to extend that phrase so as to guarantee an absolute Constitutional right to relief not subject to legislative change, which is based on averments that at best show mere torts committed by Government agents while flying over land. The future adjustment of the rights and remedies of property owners, which might be found necessary because of the flight of planes at safe altitudes, should, especially in view of the imminent expansion of air navigation, be left where I think the Constitution left it, with Congress.

Nor do I reach a different conclusion because of the fact that the particular circumstance which under the Court's opinion makes the tort here absolutely actionable, is the passing of planes through a column of air at an elevation of eighty-three feet directly over respondents' property. It is inconceivable to me that the Constitution guarantees that the airspace of this Nation needed for air navigation, is owned by the particular persons who happen to own the land beneath to the same degree as they own the surface below.[1] No rigid Constitutional rule, in my judgment, commands that the air must be considered as marked off into separate compartments by imaginary metes and bounds in order to synchronize air ownership with land ownership. I think that the Constitution entrusts Congress with full power to control all navigable airspace. Congress has already acted under that power. It has by statute, 44 Stat. 568, 52 Stat. 973, provided that "the United States of America is . . . to possess and exercise complete and exclusive national sovereignty in the airspace over the United States." This was done under the assumption that the Commerce Clause of the Constitution gave Congress the same plenary power to control navigable airspace as its plenary power over navigable waters. H. Rep. No. 572, 69th Cong., 1st Sess., p. 10; H. Rep. No. 1162, 69th Cong., 1st Sess., p. 14; see *United States* v. *Commodore Park, Inc.*, 324 U. S. 386. To make sure that the airspace used for air navigation would re-

[1] The House in its report on the Air Commerce Act of 1926 stated: "The public right of flight in the navigable air space owes its source to the same constitutional basis which, under decisions of the Supreme Court, has given rise to a public easement of navigation in the navigable waters of the United States, regardless of the ownership of adjacent or subjacent soil." H. Rept. No. 572, 69th Congress, 1st Session, page 10.

main free, Congress further declared that "navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation," and finally stated emphatically that there exists "a public right of freedom of transit . . . through the navigable airspace of the United States." Congress thus declared that the air is free, not subject to private ownership, and not subject to delimitation by the courts. Congress and those acting under its authority were the only ones who had power to control and regulate the flight of planes. "Navigable airspace" was defined as "airspace above the minimum safe altitudes of flight prescribed by the Civil Aeronautics Authority." 49 U. S. C. § 180. Thus, Congress has given the Civil Aeronautics Authority exclusive power to determine what is navigable airspace subject to its exclusive control. This power derives specifically from the Section which authorizes the Authority to prescribe "air traffic rules governing the flight of, and for the navigation, protection, and identification of, aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between aircraft, and between aircraft and land or water vehicles." Here there was no showing that the bombers flying over respondents' land violated any rule or regulation of the Civil Aeronautics Authority. Yet, unless we hold the Act unconstitutional, at least such a showing would be necessary before the courts could act without interfering with the exclusive authority which Congress gave to the administrative agency. Not even a showing that the Authority has not acted would be sufficient. For in that event, were the courts to have any authority to act in this case at all, they should stay their hand till the Authority has acted.

The broad provisions of the Congressional statute cannot properly be circumscribed by making a distinction as the Court's opinion does between rules of safe altitude of flight while on the level of cross-country flight and rules of safe altitude during landing and taking off. First, such a distinction can not be maintained from the practical standpoint. It is unlikely that Congress intended that the Authority prescribe safe altitudes for planes making cross-country flights, while at the same time it left the more hazardous landing and take-off operations unregulated. The legislative history, moreover, clearly shows that the Author-

ty's power to prescribe air traffic rules includes the power to make rules governing landing and take-off. Nor is the Court justified in ignoring that history by labeling rules of safe altitude while on the level of cross-country flight as rules prescribing the safe altitude proper and rules governing take-off and landing as rules of operation. For the Conference Report explicitly states that such distinctions were purposely eliminated from the original House Bill in order that the Section on air traffic rules "might be given the broadest construction by the . . . [Civil Aeronautics Authority . . . and the courts."[2] In construing the statute narrowly the Court thwarts the intent of Congress. A proper broad construction, such as Congress commanded would not permit the Court to decide what it has today without declaring the Act of Congress unconstitutional. I think the Act given the broad construction intended is constitutional.

No greater confusion could be brought about in the coming age of air transportation than that which would result were courts by Constitutional interpretation to hamper Congress in its efforts to keep the air free. Old concepts of private ownership of land should not be introduced into the field of air regulation. I have no doubt that Congress will, if not handicapped by judicial interpretations of the Constitution, preserve the freedom of the air, and

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[2] The full statement read:

"The substitute provides that the Secretary shall by regulation establish air traffic rules for the navigation, protection, and identification of all aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between vessels and aircraft. The provision as to rules for taking off and alighting, for instance, was eliminated as unnecessary specification, for the reason that such rules are but one class of air traffic rules for the navigation and protection of aircraft. Rules as to marking were eliminated for the reason that such rules were fairly included within the scope of air rules for the identification of aircraft. No attempt is made in either the Senate bill or the House amendment to fully define the various classes of rules that would fall within the scope of air traffic traffic rules, as, for instance, lights and signals along airways and at air ports, and upon emergency landing fields. In general, these rules would relate to the same objects as those covered by navigation laws and regulations and by the various State motor vehicle traffic codes. As noted above, surplusage was eliminated in specifying particular air traffic rules in order that the term might be given the broadest possible construction by the Department of Commerce and the courts." House Report No. 1162, 69th Congress, 1st session, p. 12.

That the rules for landing and take-off are rules prescribing "minimum safe altitudes of flight" is shown by the following further statement in the House Report: ". . . the minimum safe altitudes of flight . . . would vary with the terrain and location of cities and would coincide with the surface of the land or water at airports." *Id.* at p. 14.

at the same time, satisfy the just claims of aggrieved persons. The noise of newer, larger, and more powerful planes may grow louder, and louder and disturb people more and more. But the solution of the problems precipitated by these technological advances and new ways of living cannot come about through the application of rigid Constitutional restraints formulated and enforced by the courts. What adjustments may have to be made, only the future can reveal. It seems certain, however, that courts do not possess the techniques or the personnel to consider and act upon the complex combinations of factors entering into the problems. The contribution of courts must be made through the awarding of damages for injuries suffered from the flying of planes, or by the granting of injunctions to prohibit their flying. When these two simple remedial devices are elevated to a Constitutional level under the Fifth Amendment, as the Court today seems to have done, they can stand as obstacles to better adapted techniques that might be offered by experienced experts and accepted by Congress. Today's opinion is, I fear, an opening wedge for an unwarranted judicial interference with the power of Congress to devise solutions for new and vital national problems. In my opinion this case should be reversed on the ground that there has been no "taking" in the Constitutional sense.

Mr. Justice BURTON joins in this dissent.